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FOR THE TAXPAYERS AND OUR CHILDREN

ATTORNEY GENERAL SCOTT HARSHBARGER'S TOBACCO LITIGATION PROJECT

*A Comprehensive Packet of Information Regarding
the Attorney General's Effort to Recover Health Care
Dollars for Massachusetts Taxpayers and to Protect our Children
from the Hazards of Tobacco Products.*

December 19, 1995
Revised March 15, 1996

ATTORNEY GENERAL'S
TOBACCO LITIGATION PROJECT

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Remarks by Attorney General Scott Harshbarger



Tobacco Litigation Press Conference News Release



Questions and Answers about Tobacco Litigation



Special Counsel List for the Tobacco Lawsuit



Charts and Graphs

Remarks by
Attorney General
Scott Harshbarger



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Office of the Attorney General
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REMARKS OF ATTORNEY GENERAL SCOTT HARSHBARGER

**Announcing Tobacco Litigation
Tuesday, December 19, 1995**

Ten thousand Massachusetts residents die of smoking-related diseases annually -- 10,000 of our family members, friends, neighbors and fellow citizens.

More than \$200 million is spent by Massachusetts taxpayers annually to treat smoking-related death and disease. That's more than \$200 million out of the pockets of hardworking men and women in Massachusetts each year.

Today, we say: Enough is enough. For too long, the wrong people have paid too much in staggering human and financial costs for a poisonous product peddled by corporate giants through allegedly deceptive means.

This morning, we filed a historic lawsuit charging that the cigarette industry conspired to violate the trust of the Massachusetts public through misrepresentations and the suppression of information. Our suit charges that the cigarette industry acted to mislead consumers about the health effects of tobacco, while conspiring to keep safer alternative products off the market. It demands that the industry pay the consequences of its actions -- consequences borne, up to now, by the Commonwealth and its taxpayers.

We allege that the cigarette industry, through its own secret research, has known about the powerfully addictive properties of nicotine for decades. We allege that this secret research was used to manipulate nicotine levels in cigarettes. And, we allege that the cigarette industry publicly denied the truth to mislead consumers and the general public.

Late in 1953, tobacco company executives met at the Plaza Hotel in New York and concocted a public relations scheme to hide the truth about the health hazards of smoking. In January 1954, the tobacco companies ran advertisements in newspapers throughout the country, including Boston, Worcester and Springfield. In this advertisement, entitled, "A Frank Statement to Cigarette Smokers," and in other public statements, the industry promised it would "promote the progress of independent scientific research in the field of tobacco and health" and cooperate "in efforts to learn and make known all the facts."



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<http://archive.org/details/fortaxpayerssourc00mass>

More than four decades later, the industry has yet to keep its promises. The lawsuit charges that to this day, despite internal industry research showing that tobacco causes cancer and that nicotine is an addictive substance, the tobacco companies have continued to mislead the public, withhold what they know and stifle the development of safer cigarettes. They reap billions of dollars of profits while the taxpayers bear monumental health care costs through the Medicaid program and others.

It is time to snuff out this deadly and deceptive conspiracy. It is time for the industry to be forced to tell the truth. It is time for cigarette companies to pay for the damage they have done.

Through this lawsuit, we are seeking to recover the more than \$1 billion that the Commonwealth's citizens paid in taxes to treat tobacco-related illnesses. We are also seeking to end the tobacco industry's 40-year conspiracy of deception, suppression and misrepresentation. And, we are seeking to save our children and our children's children the physical and financial costs we have suffered.

The people of Massachusetts should know that this lawsuit is the start of what I expect will be a difficult fight against formidable and well-financed opponents. The tobacco industry has billions of dollars with which to wage an unrelenting, divisive and mean-spirited counter-attack in the courtroom and in the media. The suit will take years to resolve. I promise our absolute best effort on behalf of Massachusetts taxpayers.

There will be those who argue that people chose to smoke. They will question why the cigarette makers should pay for that "choice." The truth is that cigarettes are unique. Cigarettes are an addictive consumer product that cause disease and death when used as the manufacturer intends. The only one. The truth is that through the Medicaid program and others, all Massachusetts taxpayers -- the vast majority of whom do not smoke -- pay for the care and treatment of the indigent who suffer from smoking-related illnesses.

There will be those who argue that this suit is nothing more than government-sanctioned extortion. The truth is that this suit seeks to force the cigarette companies to come clean about smoking and to pay for damage to the Commonwealth caused by their alleged unlawful conduct. The truth is that there is nothing unreasonable or unlawful about making them pay the bill for the death and disease we allege they have caused in our state.

There will be those who argue that this suit is anti-business. The truth is that the businesses of Massachusetts are unfairly saddled with extra health care costs that should be paid by the tobacco industry. The truth is that Massachusetts businesses and the Massachusetts economy have long paid the price of cigarette maker fraud and deception in the form of lost productivity, lost wages, sick time and health insurance costs.

And finally, there will be those that argue that this suit is a waste of taxpayer resources. The truth is that Massachusetts taxpayers will not have to bear any extraordinary or even unusual costs as a result of this litigation. The private attorneys working with us are either donating their services or will be paid a percentage of the money we recover if the suit is successful. Thanks to the state's largest insurer, Blue Cross & Blue Shield, the taxpayers will not have to absorb a penny of the up-front costs of this litigation.

The tobacco industry's propaganda cannot be allowed to obscure what is at stake here.

Each year, more people in Massachusetts die from smoking-related diseases than from homicide, suicide, automobile accidents, drug and alcohol abuse and AIDS -- combined. Left unchallenged, the tobacco industry will continue to deceive and defraud the Massachusetts public while enticing our children to become its next generation of victims. Left unchallenged, the tobacco industry will continue to collect unimaginable profits while this generation of hardworking Massachusetts citizens and the next generation -- and the next and the next -- pay the sobering personal and financial price.

That is why we are seeking, as part of this lawsuit, a court order requiring the defendants to disclose their research on smoking, addiction and health; a court order requiring the tobacco industry to fund a remedial public education campaign on the health consequences of smoking; and, a court order requiring the industry to fund statewide smoking-cessation programs.

At best, success in this case could result in lower health care costs for all Massachusetts taxpayers, vastly expand smoking prevention and cessation efforts at no cost to the public and protect our children's health and welfare. At a minimum, the people of Massachusetts will have put the tobacco industry on notice that enough is enough.

(end)

**Tobacco Litigation
Press Conference
News Release**



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NEWS RELEASE

FOR IMMEDIATE RELEASE
DECEMBER 19, 1995

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**HARSHBARGER FILES LANDMARK SUIT VS. TOBACCO INDUSTRY;
SEEKS TO RECOVER MORE THAN \$1 BILLION IN TAXPAYER FUNDS,
FORCE DISCLOSURE OF RESEARCH & FUND CESSATION PROGRAMS**

Attorney General Scott Harshbarger today filed suit against six giant tobacco companies, two tobacco trade associations and two tobacco distributors in an effort to recover more than \$1 billion paid by Massachusetts taxpayers to treat indigent citizens suffering from tobacco-related illnesses.

"Today, we say: Enough is enough. For too long, the wrong people have paid too much in staggering human and financial costs for a poisonous product peddled by tobacco giants through allegedly deceptive means," Attorney General Harshbarger said in announcing the litigation.

The 75-page complaint filed in Middlesex Superior Court alleges that the tobacco industry conspired to mislead the public by denying that cigarettes cause cancer; by denying that cigarettes are addictive; and, by denying that the industry manipulates nicotine levels in cigarettes.

The suit seeks more than \$1 billion in monetary damages based on the amount of taxpayer funds the Commonwealth has spent through Medicaid and other programs to pay for smoking-related health care costs.

It also seeks court orders requiring the defendants to disclose their research on smoking, addiction and health; to fund a remedial public education campaign on the health consequences of smoking; and, to fund smoking cessation programs for nicotine-dependent smokers.

(more)

"It is time to snuff out this deadly and deceptive conspiracy. It is time for the industry to be forced to tell the truth. It is time for cigarette companies to pay for the damage they have done," Harshbarger said.

Included among the allegations in the complaint are references to internal tobacco industry documents regarding the addictive nature of nicotine that contradict statements by the chief executives of tobacco companies offered as recently as last year in congressional testimony. For example, the general counsel of Brown & Williamson wrote in 1963 that: "Moreover, nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug, effective in the release of stress mechanisms."

The complaint further alleges that tobacco industry trade associations are key instruments in carrying out the campaign to mislead the public and that the campaign began as early as the 1950s, when tobacco companies falsely stated in a public advertisement that "[w]e believe the products we make are not injurious to health"

The defendants in the case include Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries P.L.C., Lorillard Tobacco Company, Liggett Group, Inc., The Council For Tobacco Research -- U.S.A., Inc., The Tobacco Institute, Inc., Albert H. Notini & Sons, Inc., and N.E. Wholesale Tobacco, Inc.

More than 10,000 Massachusetts citizens die each year from smoking-related illnesses -- more than the combined annual deaths caused by homicide, suicide, automotive accidents, drugs and alcohol abuse and AIDS.

More than \$200 million in taxpayer funds are spent every year in Massachusetts to provide health care for those suffering from smoking-related illnesses. At the same time, data shows that teen-age use of cigarettes and smokeless tobacco products is on the increase in Massachusetts and nationally.

(more)

"Left unchallenged, the tobacco industry will continue to deceive and defraud the Massachusetts public while enticing our children to become its next generation of victims," Harshbarger said. "Left unchallenged, the tobacco industry will continue to rake in unimaginable profits while this generation of hardworking Massachusetts citizens and the next generation -- and the next and the next -- pay the sobering personal and financial price."

In addition to staff of the Attorney General's Office, the suit filed today also will be handled by Harvard Law School Professor Laurence H. Tribe, on a pro bono basis, and by lawyers from three prominent Boston firms -- Brown, Rudnick, Freed & Gesmer; Thornton, Early and Naumes; and Schneider, Reilly, Zabin & Costello -- and two national law firms -- Ness, Motley, Loadholt, Richardson & Poole, and Lieff, Cabraser, Heimann & Bernstein.

All of the private firms have extensive relevant experience with complex civil litigation.

Brown, Rudnick, Freed & Gesmer litigated and managed the first private Superfund cost recovery action to go to trial in the United States. Thornton, Early & Naumes was the first firm in the nation to undertake litigation against the lead paint industry on behalf of children with lead poisoning. Schneider, Reilly, Zabin & Costello is the oldest plaintiff's personal injury firm in Massachusetts and obtained the largest verdict for any asbestos victim in Massachusetts.

Ness, Motley, Loadholt, Richardson & Poole is an internationally recognized litigation firm best known for its work regarding asbestos and the Dalkon Shield. It is also serving as special counsel in Medicaid recovery actions against the tobacco industry currently underway in Mississippi, West Virginia and Florida. Lieff, Cabraser, Heimann & Bernstein is a nationally respected firm that concentrates its practice in class action litigation, representing plaintiffs in mass tort, securities, product liability and consumer fraud cases.

No taxpayer monies will be used to underwrite litigation expenses. All of the private firms will handle the case on a contingent fee basis, and will be paid from the proceeds of any judgment or settlement. The firms will advance the funds necessary to pay the costs of the litigation.

These funds will be supplemented by the generous support of Blue Cross and Blue Shield of Massachusetts.

(more)

"We strongly support the Attorney General's action seeking recovery of smoking-related health care costs from the tobacco industry," said William C. Van Faasen, president and chief executive officer of Blue Cross and Blue Shield of Massachusetts.

"As Massachusetts' largest health services company, Blue Cross and Blue Shield of Massachusetts has a long record of promoting healthy lifestyles and supporting initiatives to improve the health of the Commonwealth's citizens. This commitment includes extensive support for anti-smoking education and smoking cessation initiatives," Van Faasen added.

In bringing suit, Massachusetts becomes the fifth state that has brought a case against tobacco companies seeking reimbursement of Medicaid and other expenses. The other states are Minnesota, Florida, Mississippi and West Virginia.

"The people of Massachusetts should know that this lawsuit is the start of what I expect will be a difficult fight against formidable and well-financed opponents," Harshbarger said. "I promise our absolute best effort on behalf of Massachusetts taxpayers."

Harshbarger announced the suit this afternoon at St. Elizabeth's Medical Center in the Brighton section of Boston, where he was joined by representatives of the American Cancer Society, the American Heart Association, the American Lung Association, Blue Cross and Blue Shield of Massachusetts, St. Elizabeth's Medical Center, the Massachusetts Medical Society, Children's Hospital, Massachusetts General Hospital, the Massachusetts Coalition for a Healthy Future, Massachusetts Tobacco Oversight Council, the Massachusetts Smoke-Free Class of 2000, and numerous state lawmakers, medical professionals, health care advocates and concerned citizens.

In addition to notice of today's suit, the Attorney General's Office also has sent the defendants "demand letters" required under the Massachusetts Consumer Protection Act that inform the industry of the Attorney General's intention to add consumer protection claims to the lawsuit at a later date.

In related action today, the Attorney General's Office filed a motion to dismiss the U.S. District Court lawsuit that the cigarette companies filed late last month in an effort to prevent Harshbarger from filing the Commonwealth's suit. The motion to dismiss argues that the industry's federal suit is merely a pre-emptive action that raises issues that can be litigated and decided in the state lawsuit.

(end)

Questions and Answers about Tobacco Litigation



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QUESTIONS & ANSWERS ABOUT TOBACCO LITIGATION

***WHY IS THE COMMONWEALTH OF MASSACHUSETTS SUING THE
CIGARETTE COMPANIES?***

Attorney General Harshbarger is suing the cigarette industry to recover the more than \$1 billion state taxpayers have spent through Medicaid and other programs to treat indigent citizens who are sick and dying from the effects of cigarette smoking.

WHAT ARE THE MAIN ALLEGATIONS OF THE CASE?

The lawsuit alleges that industry documents, many only recently disclosed, reveal that the cigarette industry has long researched the addictive properties of nicotine, and that this secret research supports the contention that nicotine is a powerfully addictive substance. The complaint alleges that the cigarette manufacturers used these research results to manipulate the nicotine levels in cigarettes. The complaint further alleges that at the same time the industry publicly denied what it knew and misled the public.

In addition, the lawsuit alleges that late in 1953, tobacco company executives met at the Plaza Hotel in New York and concocted a public relations scheme to hide the truth about the hazards of smoking. In January 1954, the tobacco companies ran advertisements in newspapers throughout the country, including Boston, Worcester and Springfield, entitled "A Frank Statement to Cigarette Smokers." The tobacco industry promised in this advertisement and other public statements that it would "promote the progress of independent scientific research in the field of tobacco and health" and cooperate "in efforts to learn and make known all the facts." In spite of these promises, the lawsuit alleges that the industry has continued to deceive the public and conspire to suppress research and block development of a safer product.

The lawsuit charges that to this day, despite internal industry research showing that tobacco causes cancer and that nicotine has the characteristics of an addictive substance, the tobacco companies continue to mislead the public, withhold what they know and stifle the development of safer cigarettes, all the while reaping billions of dollars in profits on their deadly products.

WHAT IS THE BASIS FOR THE CASE AGAINST THE CIGARETTE INDUSTRY?

The case charges that the cigarette companies engaged in misrepresentations, suppression of material information, conspiracy, and the sale of unsafe products. Charges involving violations of the Massachusetts Consumer Protection Act may be added later.

The case charges that the cigarette industry misled Massachusetts citizens about the health effects of tobacco, while conspiring to keep safer alternative products off the market. As the result, the Commonwealth has borne the increased cost of health care under Medicaid and other programs.

BY WHAT AUTHORITY IS THE ATTORNEY GENERAL SUING?

Last year, the Massachusetts Legislature passed legislation which specifically authorizes the Attorney General to sue on behalf of the state Medicaid program. The legislation authorizes suit against the cigarette manufacturers to recover the taxpayer money spent to treat Massachusetts smokers where the cigarette manufacturers have acted illegally.

WHAT ARE WE SEEKING IN THIS LAWSUIT?

Ten thousand Massachusetts citizens die each year from smoking-related illnesses -- and thousands more contract smoking-related diseases and ailments. Cigarettes kill more people in Massachusetts than the combined totals from homicide, suicide, automotive accidents, alcohol and drug abuse and AIDS. Everyone in Massachusetts pays the price -- more than \$200 million a year in health care costs to the Medicaid program and others.

It is time for the tobacco companies to pay for the harm they have caused by their unlawful conspiracy and deceitful conduct. Specifically, the state is seeking to recover the more than \$200 million paid each year by the Commonwealth to treat tobacco-related illnesses. We are also seeking to put an end to the 40-year conspiracy of deception, suppression and misrepresentation, and to take steps to protect our children.

ARE WE SEEKING TO RECOVER DAMAGES FOR INDIVIDUALS WHO HAVE DIED OR CONTRACTED DISEASES FROM SMOKING CIGARETTES?

No. In this lawsuit we are seeking to recover damages that the Commonwealth itself has incurred, which will benefit all Massachusetts taxpayers.

IF THE CASE IS SUCCESSFUL, WILL CONSUMERS RECEIVE A SHARE OF THE FINANCIAL AWARD?

A primary purpose of the suit is recovery of Medicaid funds spent by the Commonwealth. These Medicaid funds come from tax revenues. If the case is successful, it could result in lower health care costs for all Massachusetts taxpayers.

SHOULDN'T THE PEOPLE WHO SMOKE BE THE ONES WHO HAVE TO PAY FOR THEIR OWN ILLNESS?

The fact is that the Commonwealth never "chose" to smoke, yet Massachusetts' taxpayers are saddled with the costs of treating smoking-related illnesses through the Medicaid program and others. In 1993 alone, the Massachusetts taxpayer-funded Medicaid program paid an estimated \$239 million to care for people made sick by cigarettes. Cigarette companies deny responsibility by claiming that people "choose" to smoke, but, at the same time, they have allegedly conspired to deceive the public about the deadly nature of their product, knowing that many of their new customers are children and teen-agers.

WHY ARE CIGARETTES BEING SINGLED OUT?

This case is unique, just as tobacco is unique. Unlike other products or activities that may harm one's health, cigarettes are the only consumer product that causes disease and death when used as the manufacturer intends. Moreover, we know of no other industry that has conspired like this to suppress research, defraud the public and prevent development of a safer product.

DOES THIS CASE SEND AN ANTI-BUSINESS MESSAGE?

Absolutely not. This case is a statement of support for all the honest businesses of Massachusetts. They don't conspire together to mislead the public. They don't conspire together to suppress important information. They don't hold themselves above the law.

To a large extent, the businesses of Massachusetts are saddled unfairly with increased health care costs that should be paid by the tobacco industry. Every business owner who cares about the high cost of health care -- not to mention lost productivity and lost wages -- should support this suit.

ARE WE SEEKING TO PUT THE TOBACCO COMPANIES OUT OF BUSINESS?

No. We are seeking to have the tobacco companies come clean with what they know to be the truth about smoking and to pay for the damage to the Commonwealth of Massachusetts caused by their alleged unlawful conduct. The purpose of this suit is to protect Massachusetts taxpayers from the harm we allege tobacco companies are causing.

The tobacco companies are earning billions of dollars a year in profit. They can and should pay for the death and disease that we allege they have caused in our state, and for the many millions of dollars that have been paid by Massachusetts taxpayers, nonsmokers and smokers alike, for state-financed medical care for the victims of the unlawful conduct we allege. But we can only seek to remedy the harm done to the Commonwealth of Massachusetts. Congress, the FDA and other federal bodies will have to decide the industry's future.

WHAT ARE THE ATTORNEYS CHARGING THE COMMONWEALTH FOR THEIR SERVICES?

Harvard Law School Professor Laurence H. Tribe is offering his services on a *pro bono* basis. The other lawyers we have assembled will be paid only if the Commonwealth prevails. We have put a cap on attorneys' fees of 25 percent of the recovery, substantially below the standard 33 percent contingent fee. We also will ask the Court to require the cigarette companies to pay all the attorneys' fees.

By pursuing the case this way, the Commonwealth can protect its youth and potentially collect many millions of dollars to return to the Treasury at no risk to the state, and at great risk to the law firms.

Although some assistant attorneys general will be putting time into this case -- as legal staff does in other cases -- the Commonwealth is not paying the out-of-pocket costs of this litigation. The law firms we are working with, and money generously contributed by Blue Cross and Blue Shield of Massachusetts, will absorb the upfront costs of this litigation.

WHY ISN'T THE ATTORNEY GENERAL'S OFFICE HANDLING THIS LAWSUIT ON ITS OWN?

A case of this magnitude requires extensive legal resources. If we were to handle this on our own, it would take the entire legal staff of the Attorney General's Consumer Protection and Antitrust Division plus additional staff. Other important cases would grind to a halt. By appointing special counsel to work with us, we can continue to maintain our ongoing consumer and antitrust enforcement initiatives and bring this case.

We are working with some of the best liability lawyers in Massachusetts and in the United States. The team we have assembled includes the three Boston firms of Brown, Rudnick, Freed & Gesmer; Thornton, Early & Naumes; and Schneider, Reilly, Zabin & Costello. Two national firms are also working on the case: Ness, Motley, Loadholt, Richardson & Poole; and Lieff, Cabraser, Heimann & Bernstein. These lawyers and law firms have great expertise in complex challenging litigation of this kind. We have assembled the best possible legal team to handle this type of case.

***DON'T THE TOBACCO INDUSTRY'S TAXES AND TAXES ON CIGARETTES
PAY FOR THE HARM THAT THE TOBACCO INDUSTRY HAS CAUSED?***

Paying taxes doesn't give anyone a license to engage in conspiracies or to defraud the public. Corporations that violate the laws still must be accountable for the harm that they cause. For example, other companies that have produced harmful products, such as the Dalkon Shield, have paid for the harm they have caused. That is all we are asking here -- that the tobacco companies also pay for the damage that we allege they have caused as a result of their conduct.

Taxes don't come close to covering the harm caused by tobacco-related illnesses. Despite the massive health consequences of its product, the tobacco industry has never paid a cent in compensation to society.

WHY SHOULD MASSACHUSETTS CITIZENS SUPPORT THIS LAWSUIT?

This lawsuit aims to make the tobacco industry pay for the damages we allege it has caused the Commonwealth. Any damage awards recovered in this suit benefit the Commonwealth and all of its taxpayers. This lawsuit lets us try to right the financial wrong we allege has been committed by the tobacco industry on the Commonwealth. This is an action that every Massachusetts citizen should support because of the financial benefit it will have for Massachusetts taxpayers and the protection it will afford to Massachusetts' youth.

WAS THERE A CHANCE THIS LAWSUIT COULD HAVE BEEN SETTLED?

Yes. Representatives of the Attorney General's Office pursued a potential settlement with representatives of the tobacco industry, offering them the same courtesy extended to potential civil defendants. A substantial and sustained financial commitment was sought from cigarette manufacturers to combat juvenile smoking in Massachusetts, defray state health care costs involving smoking-related illnesses and fund smoking cessation programs. Industry representatives broke off the talks and later filed a federal lawsuit designed to prevent the Attorney General's Office from going forward with its own suit.

HOW LONG WILL THIS LAWSUIT LAST?

It is difficult to say. Our best guess is that the litigation will last anywhere from two to five years. The tobacco companies, who are known for their scorched earth legal and public relations tactics, may do everything possible to drag out the litigation.

IS IT APPROPRIATE FOR THE STATE, AS WELL AS THE FEDERAL GOVERNMENT, TO BE INVOLVED WITH THESE ISSUES?

Absolutely. Our case involves claims under Massachusetts law for harm caused to the Commonwealth by the tobacco companies. No one else could bring this case on behalf of Massachusetts taxpayers. Of course, we invite the federal government to continue to pursue all appropriate actions regarding the tobacco companies as well.

(end)

CLAIMS AGAINST CIGARETTE MANUFACTURERS

Attorney General's Claims Against Cigarette Manufacturers

CLAIMS

ATTORNEY GENERAL'S CLAIMS AGAINST CIGARETTE MANUFACTURERS

In the lawsuit, the Attorney General's Office alleges:

- **A Conspiracy to Deceive the Public**

For years, and continuing to date, the defendant cigarette manufacturers and their trade associations have engaged in a conspiracy to mislead, deceive and confuse the Commonwealth of Massachusetts and its citizens about the overwhelming evidence that cigarette smoking causes fatal disease -- and that the nicotine in cigarettes is a powerfully addictive substance.

- **False Promises by Tobacco Industry to Inform the Public of Smoking's Effects**

In 1954, and since then, the cigarette manufacturers promised to conduct and report objective and unbiased research regarding smoking and health. Although the cigarette manufacturers promised the Massachusetts public that they would lead the effort to discover and disclose the truth about smoking and health, they have systematically suppressed and concealed information and waged an aggressive campaign of disinformation about the health consequences of cigarette smoking.

- **Trade Groups a Front for Objective Research**

While promising to conduct unbiased relevant research, the cigarette manufacturers have used Tobacco Institute Research Committee (TIRC) and, later, the Council for Tobacco Research (CTR) as a "front." The trade associations were designed and used to promote favorable research, to suppress negative research where possible, and to attack negative research where it could not be suppressed, all in order to convince the public the "case against smoking is not closed."

- **Suppression of Internal Research that Smoking Causes Disease**

As evidence mounted through both industry research and independent studies that cigarette smoking causes cancer and other diseases, the manufacturers and trade associations continued to publicly represent that nothing was proven against smoking. Internal documents show the truth was very different. The manufacturers knew and acknowledged internally the accuracy of scientific evidence of the health hazards of smoking. At the same time, they suppressed such evidence where they could, and attacked it when it did appear.

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- **Suppression of Safer Cigarette Products and Research**

A number of companies successfully removed certain harmful components from cigarette smoke and developed prototype cigarettes with reduced health effects -- including lower rates of cancer in test animals. Because a "safer" cigarette implies that existing cigarettes are not safe, these companies never marketed the prototypes. In addition, the research leading to these products was suppressed and never voluntarily released to the public.

- **Industry Knowledge that Nicotine is Addictive**

The cigarette manufacturers understood early that nicotine was the key to their industry's success. The industry has conducted extensive research establishing that smokers require a certain level of nicotine from their cigarettes and that tobacco "satisfaction" is directly attributable to nicotine's effect on the body after absorption.

- **Public Denial that Nicotine is Addictive**

The results of the industry research show that cigarette manufacturers know and act upon the fact that nicotine is addictive in the vast majority of smokers. The manufacturers nonetheless deny to this day that nicotine is addictive.

- **Nicotine Manipulation**

Cigarette manufacturers have developed and used highly sophisticated technologies to deliver nicotine in precisely calculated quantities designed to create and sustain addiction in a vast majority of individuals who smoke regularly. The manufacturers control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content, and careful tobacco leaf purchasing plans. The companies control nicotine delivery to smokers with design and manufacturing techniques.

- **Sales to Minors**

The cigarette manufacturers know they attract underage consumers to their products.

Special Counsel List for the Tobacco Lawsuit

SPECIAL COUNSEL FOR THE TOBACCO LAWSUIT

A List of Firms & Resume Highlights

BROWN, RUDNICK, FREED & GESMER of Boston

- Litigated and managed the first private Superfund cost recovery action to go to trial in the U.S. on behalf of a water supply company. Handled the \$20 million case at the trial, through appeals, re-trial and another appeal.
- Litigated and managed a multi-million dollar precedent-setting environmental insurance case in the Supreme Judicial Court against nine insurers.
- Successfully defended a large national law firm in securities fraud litigation regarding a \$90 million oil and gas exploration investment.
- Generated the second-highest settlement for a single claimant personal injury client recorded in Massachusetts.
- Successfully represented a major utility at trial and appeal in a cost recovery action involving direct claims, and indemnification/contribution cross claims against another major utility and its parent.

THORNTON, EARLY & NAUMES of Boston

- First law firm in the country to undertake litigation against the lead paint industry on behalf of children with lead poisoning.
- Largest law firm in the Northeast representing asbestos victims with lung disease.
- Specializes in the area of complex toxic tort litigation. Represents nearly 500 women in silicone breast implant litigation.
- Michael P. Thornton, founding partner of the firm, has representing asbestos victims since the 1970s. He is the plaintiff's liaison counsel to the U.S. District Court.

NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE of Charleston, S.C.

- Internationally recognized litigation firm best known for asbestos, Dalkon Shield and mass tort litigation.
- Serves as a national asbestos counsel with a network of associated local counsel throughout the country.

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- Represents the states of Mississippi, West Virginia and Florida in lawsuits seeking the recovery of Medicaid funds expended for tobacco related disease.
- Member of the Executive Committee in a national class action (Castano, et. al. v. The American Tobacco Co., et. al.) pending on behalf of all plaintiffs addicted to nicotine.
- Represents plaintiffs in environmental tobacco smoke and individual smoker cases against the tobacco industry.

LIEFF, CABRASER, HEIMAN AND BERNSTEIN of San Francisco, Calif.

- During the past 13 years, the firm has tried and/or settled over 120 class actions, resulting in verdicts or settlements of over \$11.8 billion.
- The firm concentrates its practice in the field of class action litigation, representing plaintiffs in mass tort, securities, product liability and consumer fraud cases.
- Three of the firm's name partners are actively involved in the Castano cigarette class action litigation. The firm serves on the Plaintiff's Executive Committee, and its partners hold leadership positions on the Law Committee, Discover Executive Committee and Finance Committee.
- The firm has worked in conjunction and cooperation with government, regulatory and enforcement agencies, including the Securities and Exchange Commission, the Federal Trade Commission and several state attorneys general in securities and consumer fraud class actions.

SCHNEIDER, REILLY, ZABIN & COSTELLO of Boston

- Oldest plaintiff's personal injury firm in Massachusetts.
- The firm was counsel for plaintiff's in numerous landmark cases in the areas of product liability, personal injury and unfair business practices.
- Obtained the largest verdict for any asbestos victim in Massachusetts. Represented thousands of plaintiffs in mass tort product liability cases, including asbestos, the Dalkon Shield IUD and DES. Currently representing numerous women in silicone gel breast implant cases.
- One of the firm members assisted in the U.S. Environmental Protection Agency in obtaining the maximum allowable fine against a pesticide manufacturer for the misapplication of pesticides.

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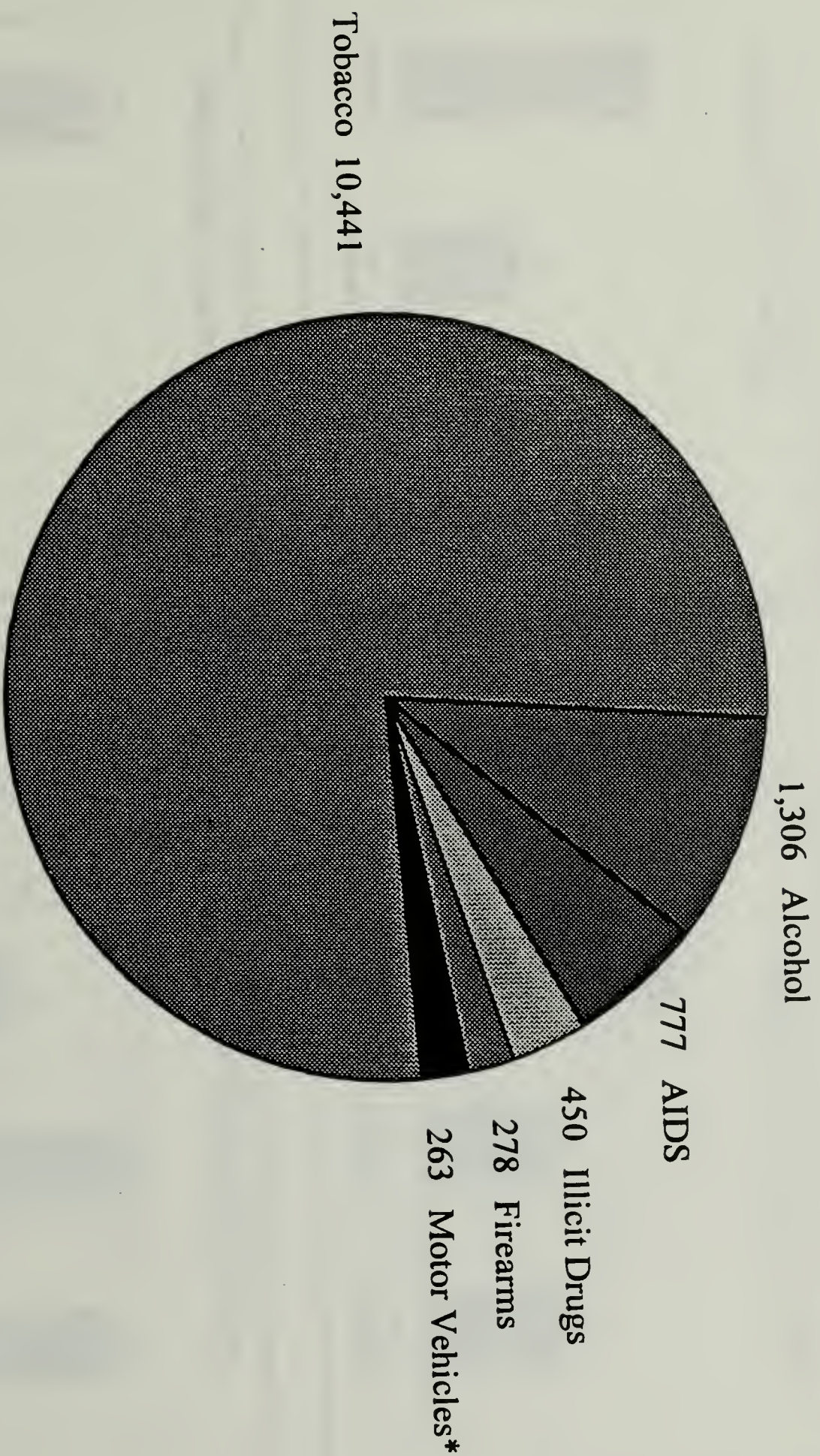
Charts and Graphs

Smoking-Related Medicaid Expenses In Massachusetts

| | |
|------|---------------|
| 1990 | \$226,520,000 |
| 1991 | \$250,230,000 |
| 1992 | \$256,380,000 |
| 1993 | \$239,310,000 |



Massachusetts Preventable Deaths in 1993**



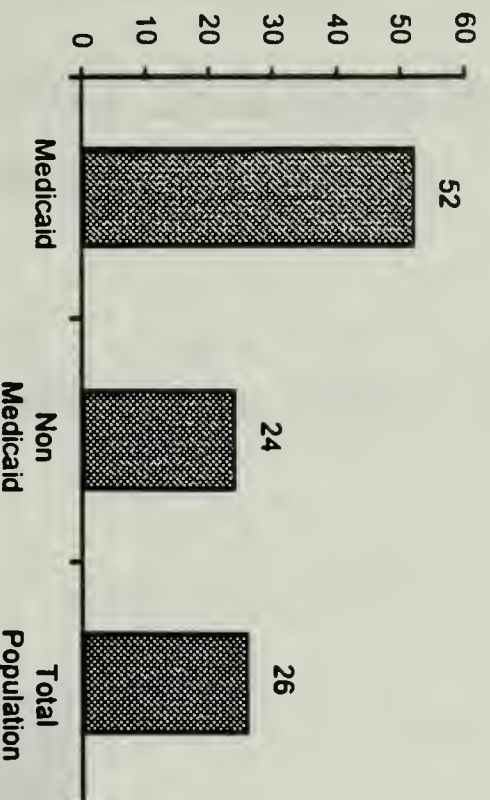
* Motor vehicle deaths attributed to alcohol and illicit drugs are included in those categories and are excluded from the motor vehicle category.

** Advanced Data - Deaths 1993
McGinnis and Foege, JAMA 1993

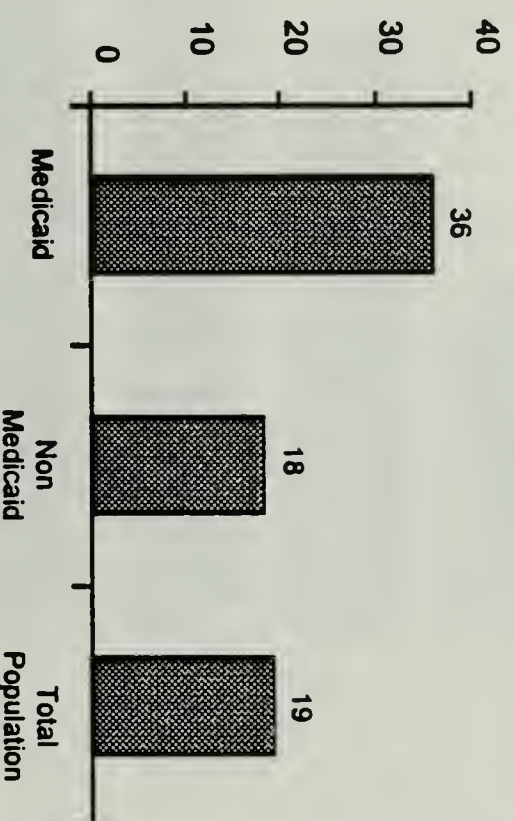
Massachusetts Tobacco Survey

1993

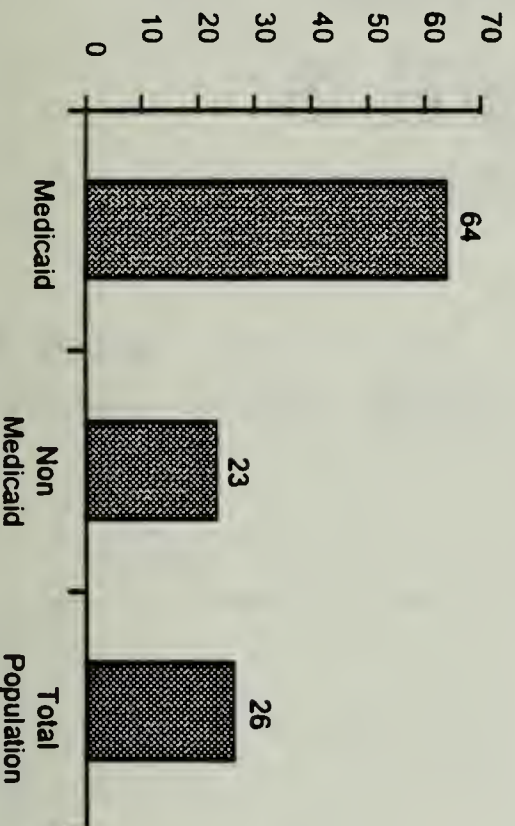
Females (18-39) % Smokers



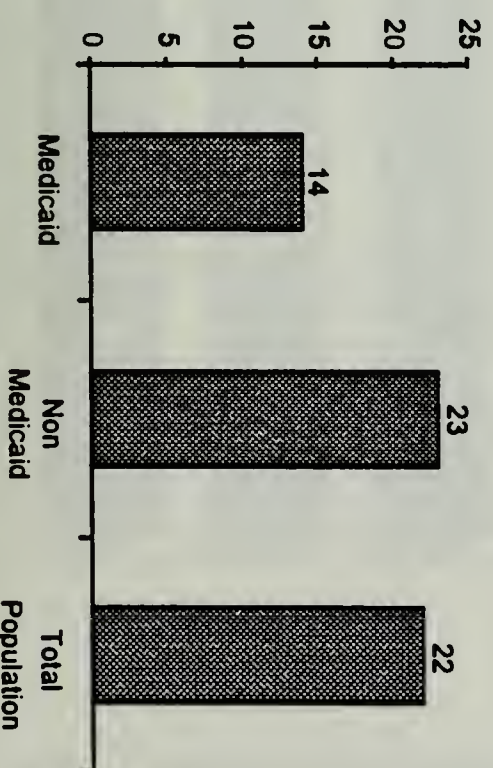
Females (40 and over) % Smokers



Males (18-39) % Smokers



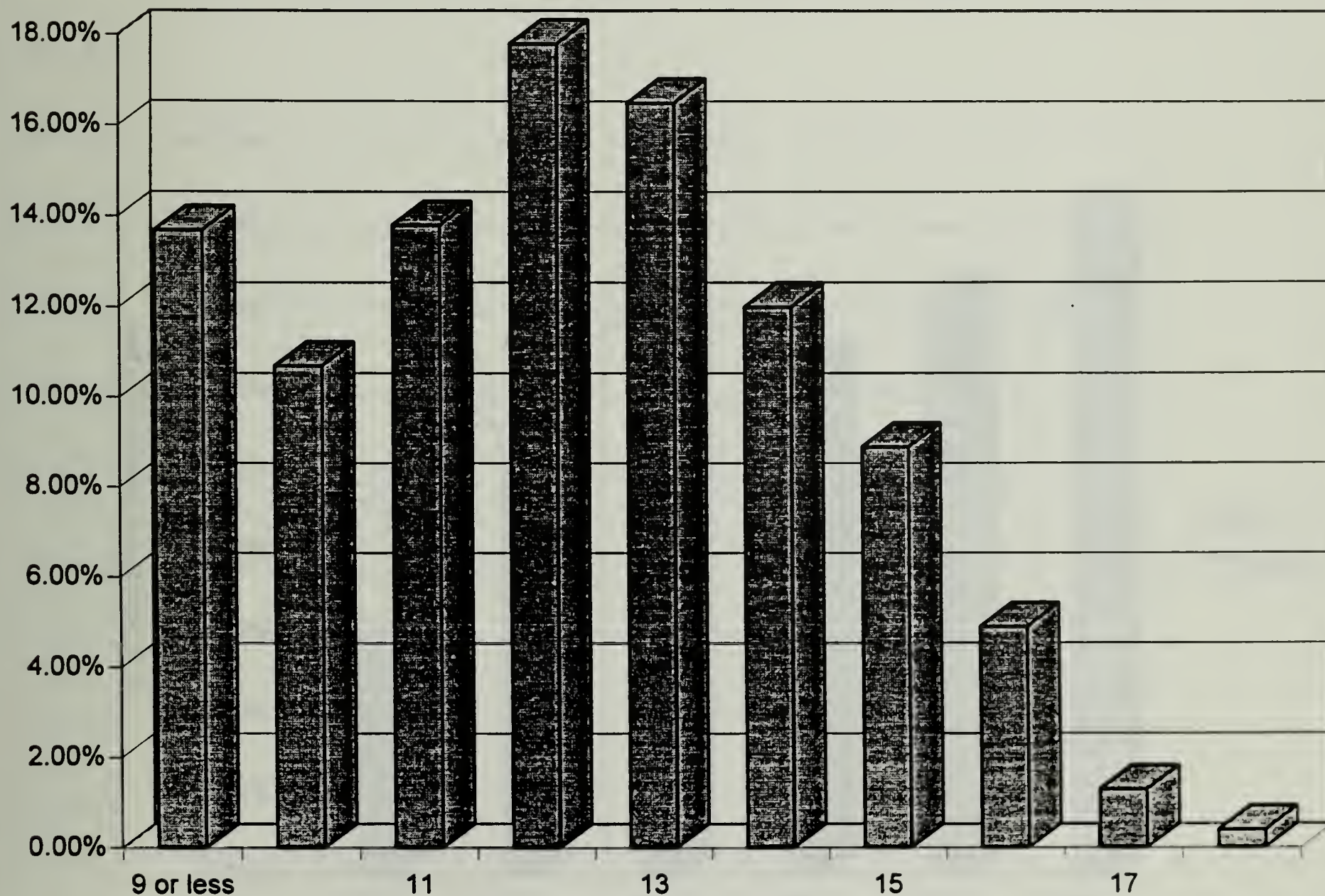
Males (40 & over) % Smokers



Age at first use of cigarettes by Massachusetts Junior High & High School Students

(1993 Prevalence Study - Users Only)

| | | | | | | | | | |
|-----------|--------|--------|--------|--------|--------|-------|-------|-------|------------|
| 9 or less | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 or more |
| 13.70% | 10.70% | 13.80% | 17.80% | 16.50% | 12.00% | 8.90% | 4.90% | 1.30% | 0.40% |

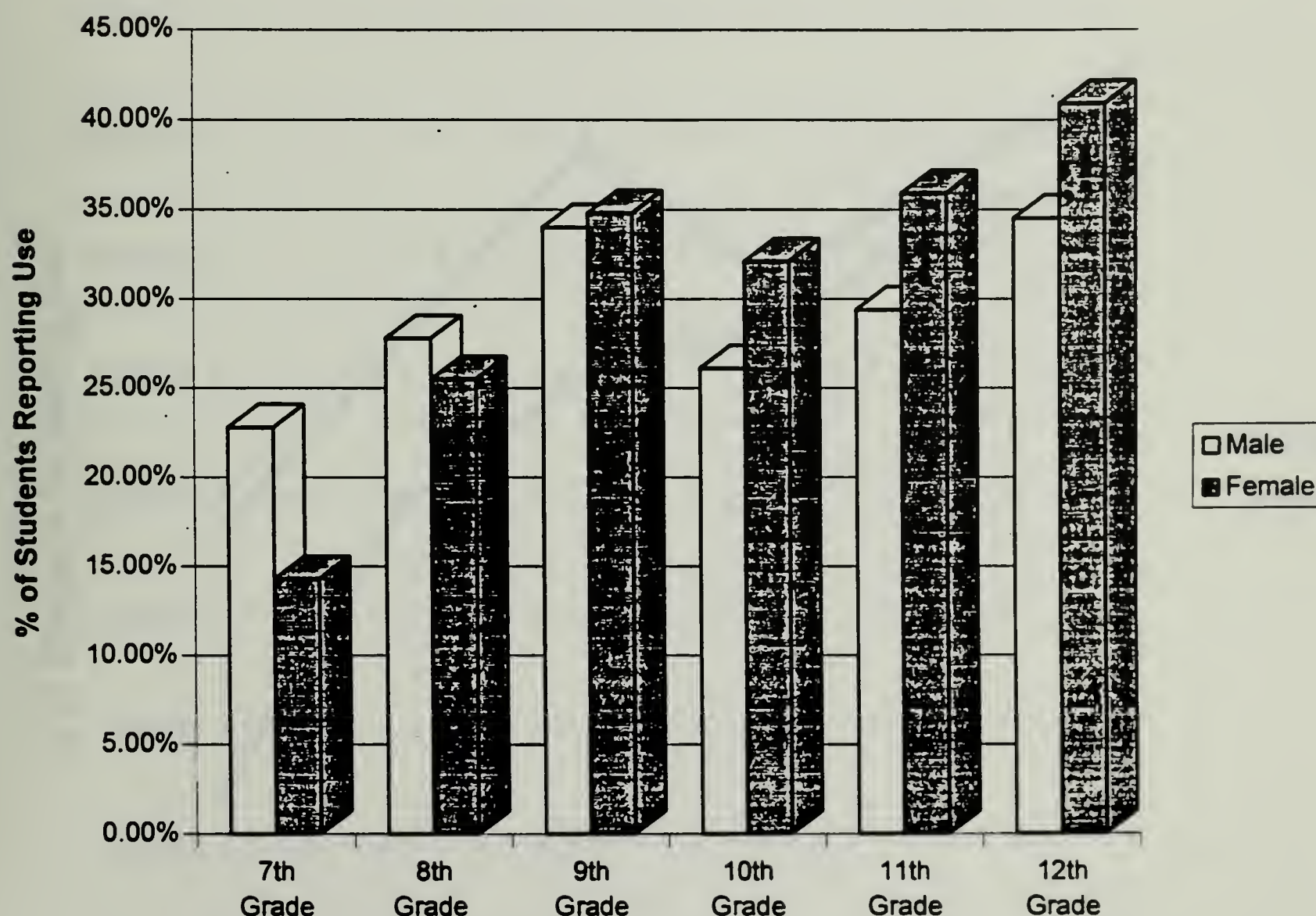


Source: Massachusetts Department of Public Health

Current use of cigarettes by 1993 Massachusetts Junior High & High School Students

by Gender and Grade

| | 7th Grade | 8th Grade | 9th Grade | 10th Grade | 11th Grade | 12th Grade |
|--------|-----------|-----------|-----------|------------|------------|------------|
| Male | 22.80% | 27.80% | 34.00% | 26.10% | 29.40% | 34.50% |
| Female | 14.30% | 25.50% | 34.80% | 32.10% | 35.90% | 40.90% |



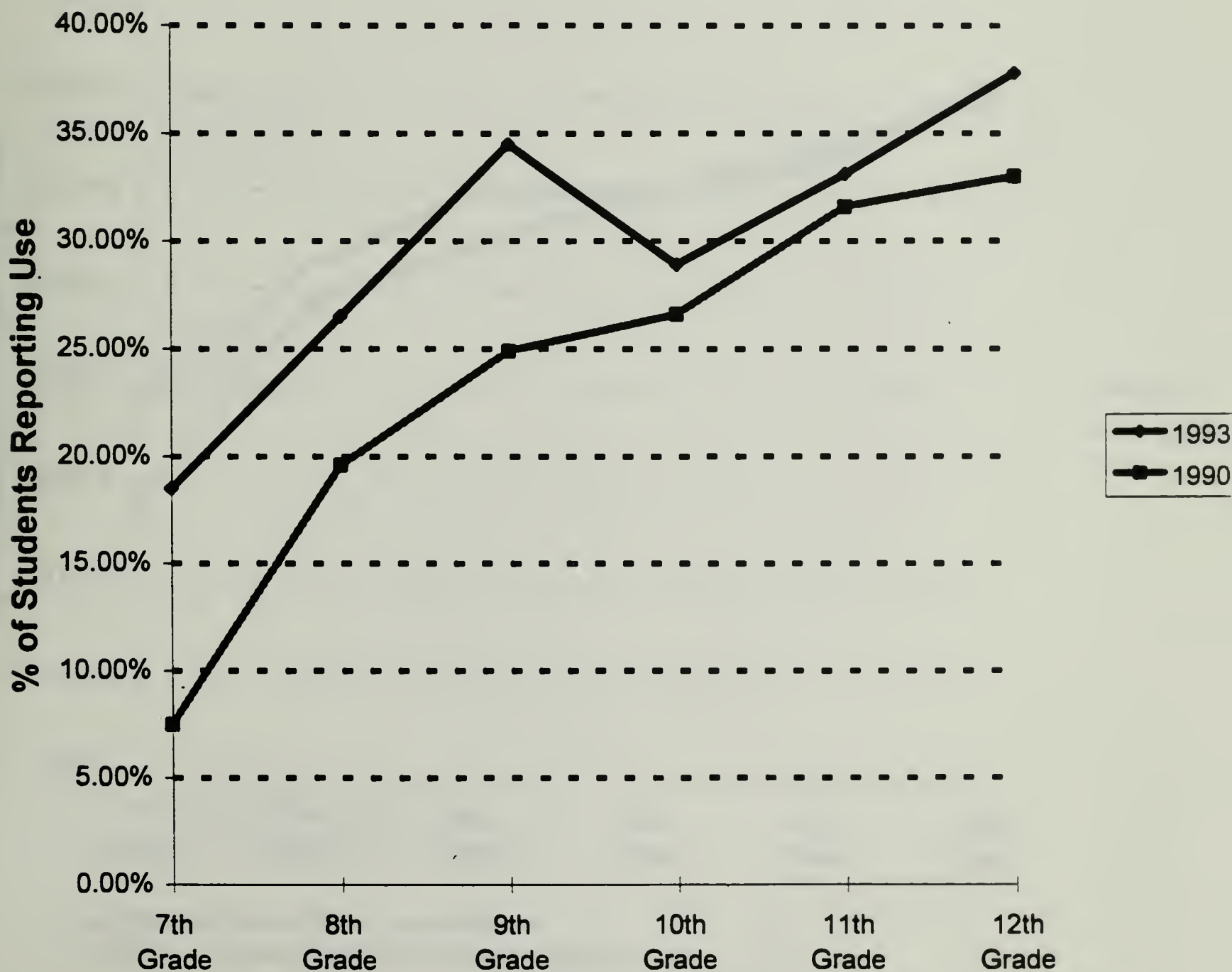
Current Use: Used at least once in 30 days prior to survey

Sourc Massachusetts Department of Public Health

Current use of cigarettes by Massachusetts Junior High & High School Students 1990 & 1993

by grade

| | 7th Grade | 8th Grade | 9th Grade | 10th Grade | 11th Grade | 12th Grade |
|------|-----------|-----------|-----------|------------|------------|------------|
| 1993 | 18.50% | 26.50% | 34.50% | 28.90% | 33.10% | 37.80% |
| 1990 | 7.50% | 19.60% | 24.90% | 26.60% | 31.60% | 33.00% |



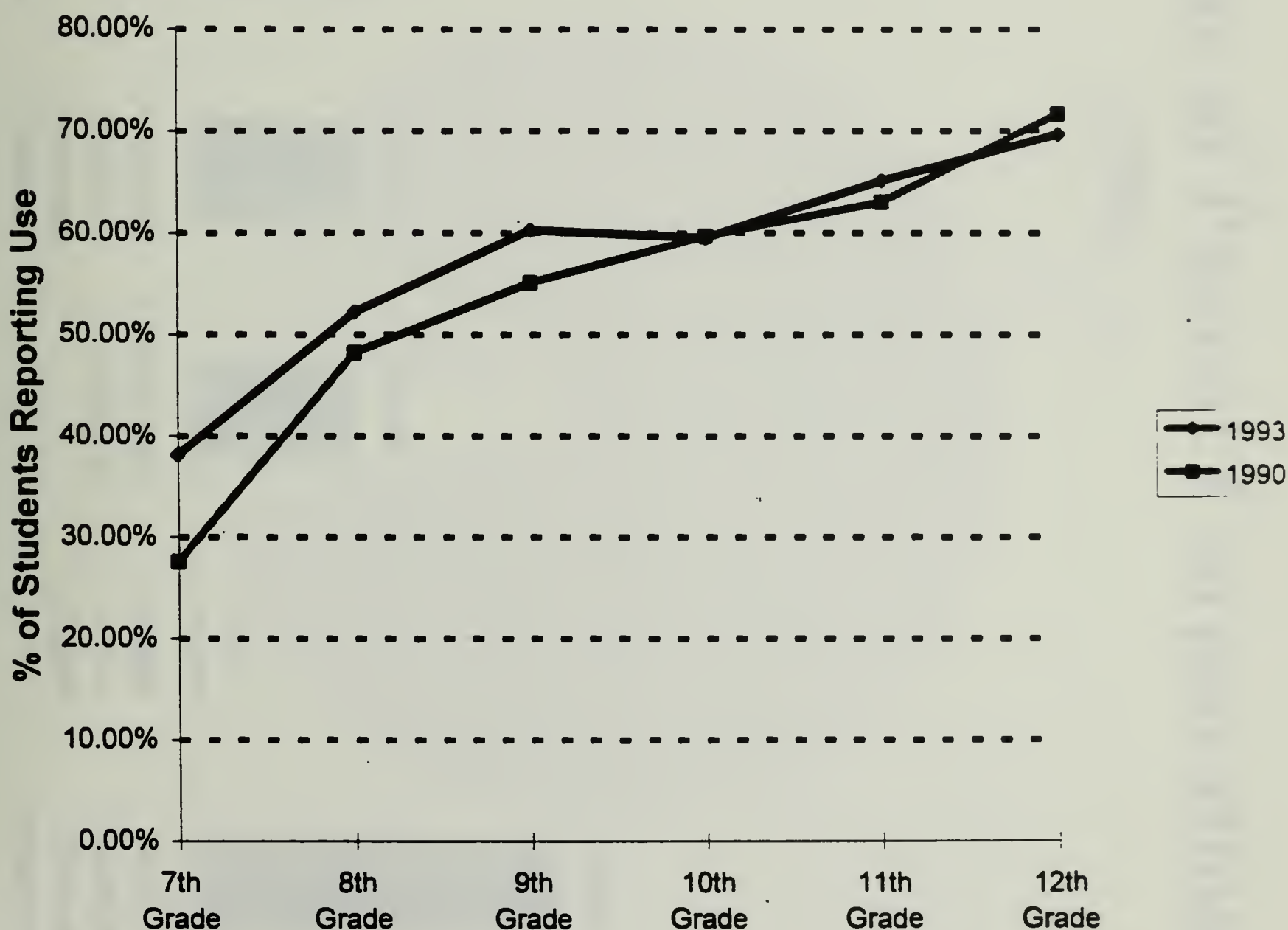
Current Use: Used at least once in 30 days prior to survey

Source: Massachusetts Department of Public Health

Lifetime use of cigarettes by Massachusetts Junior High & High School Students 1990 & 1993

by grade

| | 7th Grade | 8th Grade | 9th Grade | 10th Grade | 11th Grade | 12th Grade |
|------|-----------|-----------|-----------|------------|------------|------------|
| 1993 | 38.10% | 52.20% | 60.30% | 59.50% | 65.10% | 69.70% |
| 1990 | 27.60% | 48.20% | 55.10% | 59.70% | 63% | 71.70% |

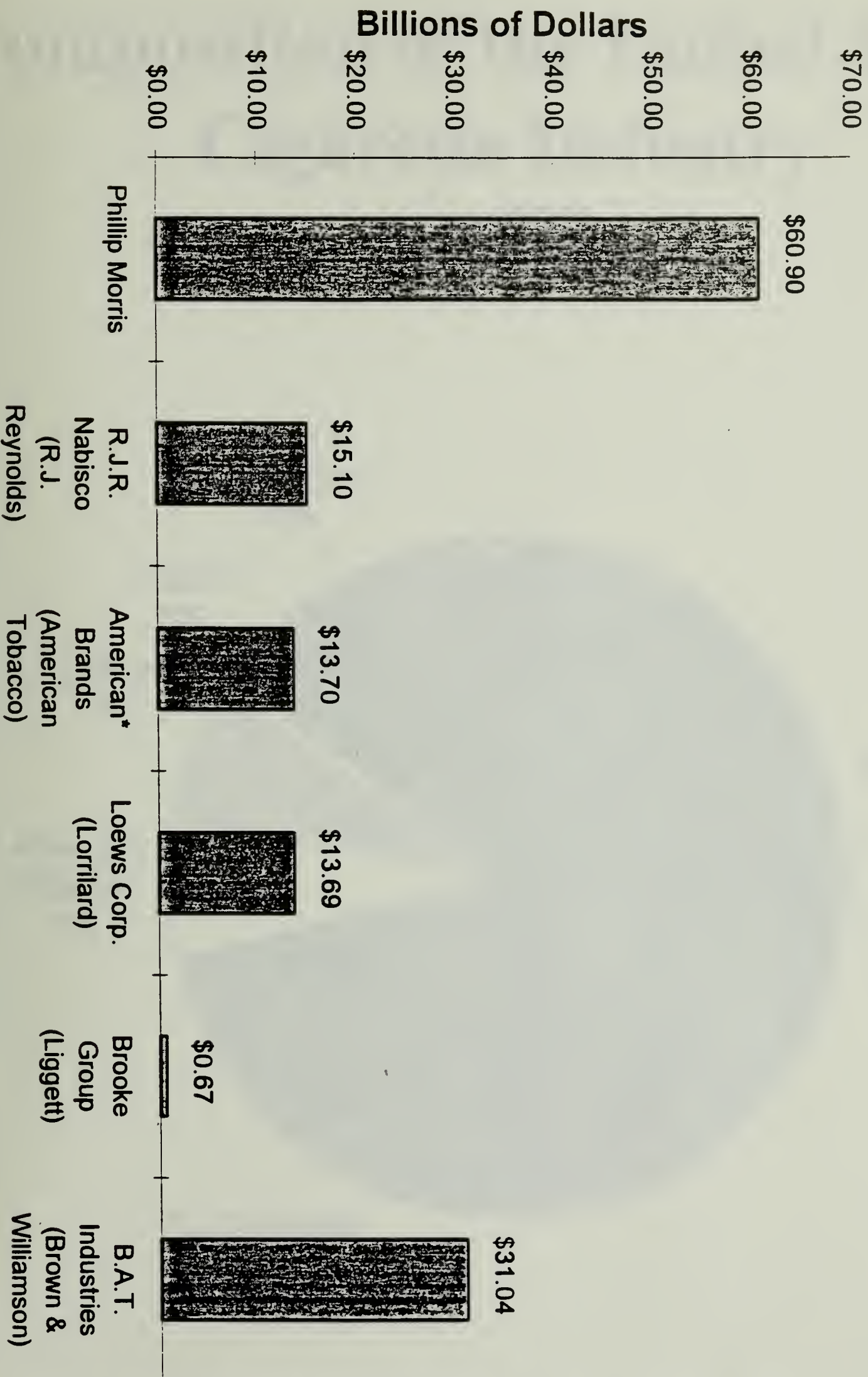


Lifetime Use: Used at least once in lifetime

Source: Massachusetts Department of Public Health

Annual Revenue of Parent Corporations

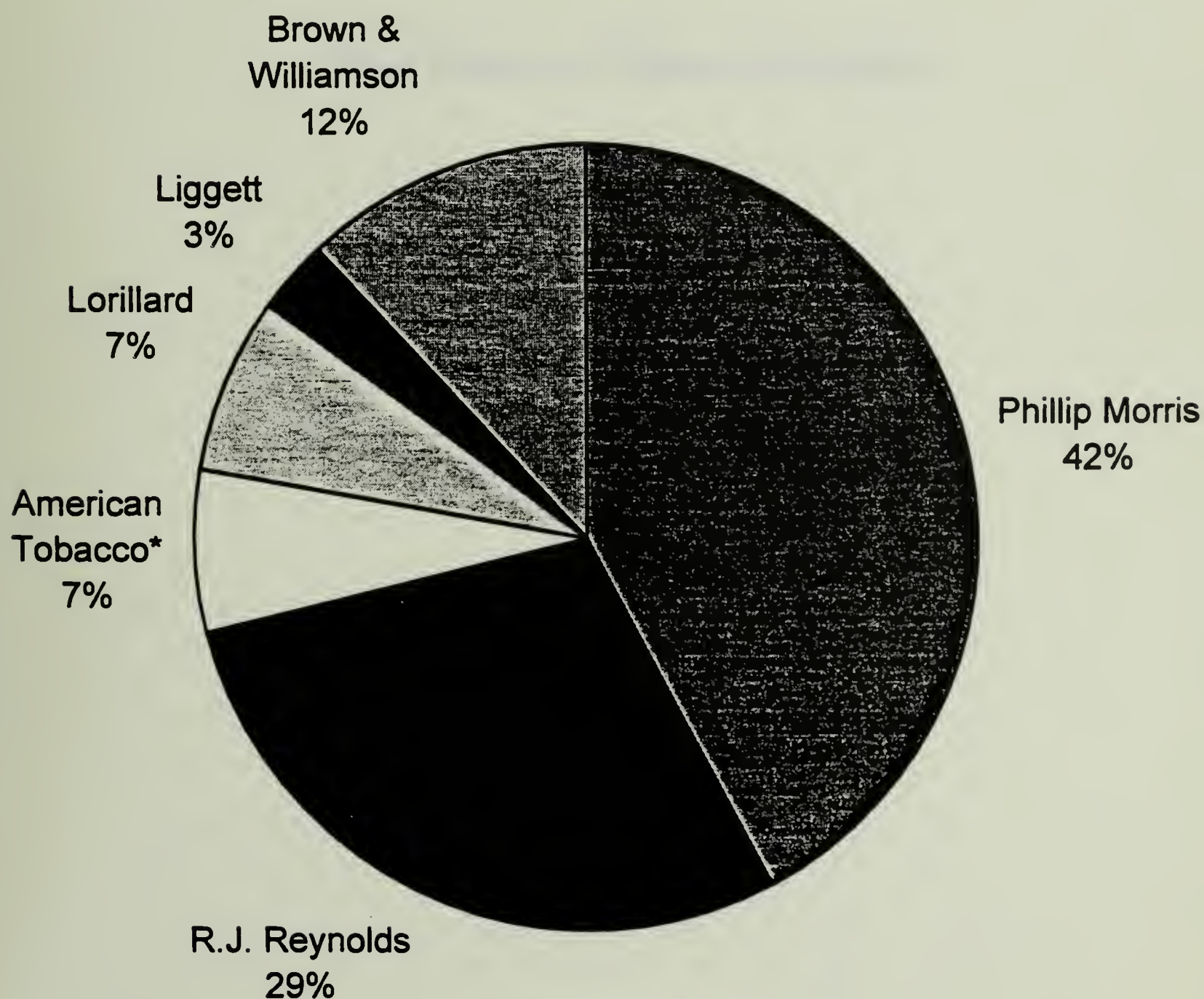
(1993)



*Now owned by British American Tobacco

Composition of the United States Cigarette Industry

(in 1992)



*Now owned by British American Tobacco, together with Brown & Williamson

Section III

Fact Sheet on Tobacco Initiative



Relevant News Releases

Fact Sheet on Tobacco Initiative

FACT SHEET

ATTORNEY GENERAL'S RECORD ON TOBACCO

Attorney General Scott Harshbarger's lawsuit against the tobacco industry caps a series of actions his administration has taken on tobacco issues since 1991, including efforts to prevent minors from obtaining cigarettes, force smokeless tobacco companies to alter their policies in Massachusetts and lend support to various federal, national, state and local initiatives.

MASSACHUSETTS INITIATIVES

- **Cigarette Sting** -- In April 1994, the Attorney General's Office released results of a sting operation designed to determine the ease with which minors can buy cigarettes. Of the 248 attempts the high school students made at supermarkets, convenience stores and other locations across the state, 159 were "successful" purchases. Overall, the minors were able to purchase cigarettes 64 percent of the time, including 79 percent of the time at supermarkets. Many Massachusetts cities and towns, working through their boards of health, have since undertaken similar stings in their communities.
- **Supermarket Settlements** -- As a result of the sting, the Attorney General's Office pursued settlements with five large Massachusetts-area supermarket chains, who ultimately agreed to pay a \$1,250 penalty for each pack of cigarettes sold illegally to minors during the sting. In total, the chains paid \$112,500 in penalties, paid for the costs of the office's investigation and agreed to use new methods to prevent the sale of tobacco products to minors.
- **Smokeless Tobacco Sting** -- In the summer of 1995, the Attorney General's Office conducted another sting operation. Twenty-two Massachusetts minors obtained free samples of Skoal, a smokeless tobacco, through the mail by simply stating they were over 18. Averting a lawsuit, U.S. Tobacco, the manufacturer of Skoal, paid Harshbarger's office \$40,000 in penalties. In addition, U.S. Tobacco agreed to require photocopies of drivers' licenses before sending free samples through the mail and to double-check consumers' ages through commercially available databases.

(more)

NATIONAL INITIATIVES

- **Joe Camel Ads** -- In September 1993, Harshbarger and 26 other attorneys general urged the Federal Trade Commission to ban R.J. Reynolds' "Joe Camel" advertising campaign, arguing that it unfairly encourages children to smoke. In a letter to the FTC, the attorneys general pointed out that a 1991 study revealed that Camel's share of the underage market had increased from 0.5 percent to almost 33 percent in just four years.
- **Fast Food Restaurants** -- In November 1993, Harshbarger and 15 other attorneys general issued a report recommending fast food restaurants ban smoking. The report emphasized the dangerous effects of passive smoke on children, who make up 25 percent of customers and 40 percent of employees at fast food eateries.
- **Recommendations for Reduced Teen Tobacco Use** -- In late December 1994, Harshbarger and 27 other attorneys general released a report that details how states can reduce tobacco sales to minors. Among the recommendations, the report urges states to monitor tobacco sales to minors, utilize price scanner technology to verify tobacco buyers' age and require government-issued photo ID's for proof of age.
- **Support for Federal Efforts** -- In August 1995, Harshbarger and 12 other attorneys general publicly endorsed President Clinton's plan to reduce smoking by children. In November, the Attorney General wrote a letter to members of Congress in support of the federal Food and Drug Administration's efforts to further regulate tobacco products.

LOCAL & LEGISLATIVE INITIATIVES

- **Legal Support for Town Bylaws** -- The Attorney General's Office has intervened in the successful legal defense of several local bylaws restricting the sale of tobacco products, including a Provincetown ban on the sale of cigarettes from vending machines and a Northampton ban on smoking in restaurants.
- **Passage of Town Bylaws** -- The Attorney General's Office has approved as constitutional several Massachusetts town bylaws that restrict smoking. For instance, bylaws in Brookline and Winchester banning smoking in restaurants were approved by Harshbarger's office, as was a Sharon bylaw banning smoking in public parks. A similar proposal in Wakefield is currently under review.
- **Support for State Legislature Initiatives** -- In the fall of 1995, the Attorney General's Office reviewed a legislative bill that would require detailed industry disclosure of cigarette ingredients. Harshbarger told lawmakers that, should the bill become law, he would defend it against possible tobacco industry litigation.

Relevant News Releases



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N E W S R E L E A S E

FOR IMMEDIATE RELEASE
SEPTEMBER 21, 1993

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HARSHBARGER AND 26 OTHER A.G.'S ASK FTC TO BAN "JOE CAMEL" ADS

Massachusetts Attorney General Scott Harshbarger joined Attorneys General from 26 other states today to ask the Federal Trade Commission (FTC) to ban R.J. Reynolds' "Joe Camel" advertising campaign as unfair because it encourages children to smoke.

In a letter to Janet Steiger, Chair of the FTC, the Attorneys General said that federal action was necessary to protect this nation's children from this advertising because it entices children to smoke. The Attorneys General urged the Commission to adopt its staff's recommendation supporting the ban.

"Cigarette smoking by children is a dangerous public health problem," said Attorney General Harshbarger. Children are too young to make informed choices about smoking or to purchase cigarettes legally. The "Joe Camel" advertising campaign is unfair and against the public interest because it encourages smoking by children."

The letter to the FTC noted that nearly two years ago, the Journal of the American Medical Association published a study regarding the connection between underage smoking and the Joe

-more-

Camel advertising campaign. For example, by the time they are six, children recognize that Joe Camel represents cigarettes almost as often as they recognize that Mickey Mouse represents the Disney Channel. Since 1987, when the Joe Camel "smooth character" was introduced, Camel's share of the under-18 market has risen dramatically from 0.5% to 32.8%

"The dramatic jump in Camel's share of the under 18 market demonstrates, sadly, the effectiveness of their campaign," said Harshbarger.

Despite a general decline in the percentage of adult smokers, smoking by children has increased. For example, in 1991-92 there was a 12% increase in the number of junior high school student smokers.

In Massachusetts, as in the other signatory states, it is a crime to sell cigarettes to any person under the age of 18. In fact, no one in Massachusetts, with the exception of the child's parent or guardian, may even give a cigarette to a minor.

Assistant Attorneys General Susan McHugh and Ernest Sarason of Harshbarger's Consumer Protection and Antitrust Division, handled the matter for the Attorney General.



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NEWS RELEASE

FOR IMMEDIATE RELEASE
NOVEMBER 8, 1993

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HARSHBARGER AND 15 OTHER A.G.'S ASK FAST FOOD
RESTAURANTS TO GO SMOKE-FREE

Massachusetts Attorney General Scott Harshbarger, joined by Attorneys General from 15 other states, today released a preliminary report recommending that fast food chains take steps to ban smoking in their restaurants. The report, "Fast Food, Growing Children and Passive Smoke: A Dangerous Menu," emphasized the dangerous effects of passive smoke on children, who make up 25 percent of the customers and 40 percent of the employees of fast food restaurants.

"I am very concerned about the serious public health problems posed by the dangerous combination of children and smoking. Just as I recently urged the FTC to ban Joe Camel ads because they encourage children to smoke, today I ask the fast food industry to move quickly in reducing the harmful effects of passive smoke on their young customers and employees," said Attorney General Harshbarger. "Our report indicates that most fast food companies would ultimately like to go smoke-free, but want to operate on a level playing field. With their cooperation, we hope to accomplish both objectives."

The report's preliminary recommendations to the fast food industry for implementing smoke-free policies in their restaurants, developed after cooperative meetings with industry representatives, include:

1. Implement immediately a smoke-free policy in all corporate-owned restaurants, or at least in all newly opened corporate restaurants.
2. Require a smoke-free policy in all new franchise agreements and encourage all franchise operators to implement immediately a smoke-free policy.

-more-

3. Remove cigarette vending machines from all fast food restaurants.
4. Support legislation to ban smoking in restaurants.
5. Post warnings about the dangers to children of passive smoke in restaurants that are not smoke-free.

Since 1979, the Surgeon General has warned the American public of the possible health problems posed by environmental tobacco smoke (ETS) or passive smoke. In January, the federal Environmental Protection Agency (EPA) published a report concluding that passive smoke should be classified as a known human carcinogen, responsible annually not only for approximately 45,000 deaths (including 3,000 lung cancer deaths) in nonsmokers but also for lower respiratory tract infections and asthmatic episodes in hundreds of thousands of American children.

In May, Attorneys General from 15 states, concerned about the serious health risks posed by passive smoke and the marketing efforts of fast food chains to attract children as customers, formed a working group to study the problem and to work cooperatively with the fast food industry, the medical community and consumer groups to develop a plan of action. The group encourages comments on its initial report and recommendations. It also plans on holding follow-up meetings early next year.

Assistant Attorneys General Ernest Sarason and Susan McHugh, of Harshbarger's Consumer Protection and Antitrust Division, handled the matter for the Attorney General.



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N E W S R E L E A S E

FOR IMMEDIATE RELEASE
APRIL 27, 1994

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A.G. HARSHBARGER RELEASES SURVEY RESULTS ON CIGARETTE
SALES TO MINORS IN COMMONWEALTH

Attorney General Scott Harshbarger today released a report detailing the findings of a statewide survey of retailer compliance with the laws prohibiting the sale of tobacco to minors. As part of the survey, young people attempted to purchase tobacco products at stores in communities throughout the Commonwealth and were successful in obtaining the product nearly two-thirds of the time.

"The survey results are extremely disturbing, given the soaring costs of health care and the fact that smoking kills more people than guns do," said Harshbarger. "Preventing kids from ever starting to smoke is critical, 3,000 kids become new smokers every day, (about 1 million per year), as the tobacco industry continues to target the young in their advertising. Approximately 75 percent of all current smokers became addicted to tobacco by the age of 18."

The report points out that annual deaths related to smoking outnumber those related to alcohol abuse by almost four times; to homicide by almost 17 times; and to illegal drugs by more than 44 times.

-more-

In addition, the U.S. Secretary of Health and Human Services estimates that smoking seriously affects the country through approximately \$65 billion per year in health and economic costs.

Harshbarger has previously joined 26 other states in asking the Federal Trade Commission to ban Cool's "Joe Camel" advertising campaign.

The students who participated in the survey are between the ages of 13 and 17 and were successful in buying tobacco products 159 out of 248 times, or 64 percent of the time. The survey was conducted at 109 stores in 23 different communities throughout the Commonwealth. A summary of the survey, with a further breakdown of the results, is attached.

A merchant who sells tobacco products in the Commonwealth to a person under the age of 18 violates both the Massachusetts Consumer Protection Act and Massachusetts General Laws, Chapter 270, Section six.

The Attorney General's Consumer Protection and Antitrust Division intends to initiate civil enforcement actions against the worst alleged offenders, including firms that had numerous illegal sales to youth and do business in multiple locations.

In addition to describing the survey methodology and results, the Attorney General's report details a number of steps that his office has already taken to reduce the sale of cigarettes to minors in the Commonwealth and makes specific recommendations to tobacco retailers about practices and procedures that should be implemented to minimize the illegal sale of tobacco to minors. The report also discusses a number of other innovative approaches that have been experimented with elsewhere in the effort to reduce teen smoking and warrant further examination.

Harshbarger gave special thanks to the 42 young persons who volunteered their time for this project. The participants have all previously demonstrated their public-spiritedness through participation in a variety of school and community-based programs that deal with issues such as violence and substance abuse among young people.

Members of the Attorney General's staff who worked on the survey and report include: Assistant Attorney General George Weber, Chief of Harshbarger's Consumer Protection and Antitrust Division; Carmen Russo, Chief of the Civil Investigations Division; Assistant Attorney General Steve Berenson and paralegals Tim Sullivan and Diego Rotsztain, of the Consumer Protection and Antitrust Division; and civil investigators Vanessa Sanchez-Gasparro, Alfred Barbalunga and Shirley Lee.

COPIES OF ATTORNEY GENERAL HARSHBARGER'S "REPORT ON THE SALE OF TOBACCO TO MINORS IN MASSACHUSETTS" ARE AVAILABLE FROM HIS OFFICE.

SUMMARY OF RESULTS

| | <u>ATTEMPTS</u> | <u>PURCHASES</u> | <u>PERCENTAGE</u> |
|-------------------------------------|-----------------|------------------|-------------------|
| OVERALL RESULTS | 248 | 159 | 64 |
| GIRLS | 128 | 87 | 68 |
| BOYS | 120 | 72 | 60 |
| SUPERMARKETS | 129 | 102 | 79 |
| CONVENIENCE STORES/ GAS STATIONS | 61 | 30 | 49 |
| DRUG STORES/OTHERS | 58 | 27 | 47 |
| EASTERN MASS. | 187 | 124 | 66 |
| WESTERN/CENTRAL MASS. | 61 | 35 | 57 |

Cities and Towns: Beverly, Boston, Brockton, Dedham, Dracut, East Longmeadow, Fall River, Framingham, Great Barrington, Haverhill, Lawrence, Lee, Lenox, Longmeadow, Lowell, Milton, New Bedford, Pittsfield, Quincy, Springfield, Tewksbury, Stoughton, Westwood



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N E W S R E L E A S E

FOR IMMEDIATE RELEASE
AUGUST 4, 1994

CONTACT: JOHN LAMONTAGNE
(617) 727-2543

HARSHBARGER ANNOUNCES SETTLEMENT WITH THREE
SUPERMARKET CHAINS OVER SALE OF CIGARETTES TO MINORS

Attorney General Scott Harshbarger announced today that his office has reached agreements with three large supermarket chains addressing the problem of the illegal sale of cigarettes to minors.

In what is believed to be the first application of a state Consumer Protection Act to the sale of cigarettes to minors, Harshbarger's Consumer Protection and Antitrust Division recently notified The Stop & Shop Company, Shaw's Supermarkets, Inc. and Purity Supreme, Inc., all of which do business in the state, that it was prepared to begin enforcement proceedings against them for alleged numerous illegal sales of cigarettes during Harshbarger's statewide survey concerning the sale of tobacco to minors in the Commonwealth.

"My office is prepared to continue to use the sanctions available under the Consumer Protection Act to deter illegal sales of cigarettes to minors," said Attorney General Harshbarger. "I appreciate the cooperation of Shaw's, Stop & Shop and Purity Supreme in addressing the serious public health problem of the sale of cigarettes to minors."

As part of the Assurance of Discontinuances filed in Suffolk Superior Court today, in which the parties admitted to no violations of the law, each supermarket agreed to pay a penalty of \$1,250 for each illegal sale, for a total penalty of \$77,500.00. The \$1,250 amount is approximately four times greater than the maximum fine that can be

obtained under the criminal law for the sale of cigarettes to minors, and is believed to be the largest penalty paid to date for such sales anywhere in the country. The supermarkets also agreed to pay \$7,000 towards the Attorney General's costs of conducting his investigation.

In addition, the three supermarkets also agreed to undertake a number of affirmative steps to prevent the sale of tobacco products to minors in the future. Harshbarger suggested that other tobacco retailers should look to those steps as models as they implement their own measures to prevent tobacco sales to minors.

The Attorney General's office worked with each chain to develop a program for eliminating tobacco sales to minors consistent with each chain's particular operational, design and business needs. Among the steps agreed to by the chains:

- * placing all tobacco products in locked cabinets that can only be opened by store employees;
- * requiring proof of age in the form of a government issued identification card from all persons who appear to be underage, before they may purchase cigarettes;
- * implementing optical scanner technology that will not allow completion of a sale of a tobacco product unless data is entered demonstrating that the buyer is of legal age; and
- * posting notices regarding the legal age for purchasing cigarettes at all locations in its stores from which tobacco products may be purchased.

"These are important steps," Attorney General Harshbarger said.

"I'm also pleased that Purity Supreme has agreed to use up to \$50,000 in advertisement flyers and other promotional materials to discourage the use of tobacco products by minors."

Assistant Attorney General George Weber, Chief of Harshbarger's Consumer Protection and Antitrust Division, and Assistant Attorney General Steve Berenson, also of that division, handled the matter. Harshbarger also thanked Commissioner David Mulligan of the Department of Public Health for his assistance in the matter.



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N E W S R E L E A S E

FOR IMMEDIATE RELEASE
SEPTEMBER 9, 1994

CONTACT: JOHN LAMONTAGNE
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SETTLEMENT REACHED WITH TWO SUPERMARKET CHAINS OVER
SALES OF CIGARETTES TO MINORS

Attorney General Scott Harshbarger announced today that his office has reached agreements with two supermarket chains addressing the problem of the illegal sale of cigarettes to minors.

DeMoulas Supermarkets, Inc./Market Basket, Inc., and Price Chopper Operating Company of Massachusetts Inc., are the latest chains to sign an agreement with Harshbarger's office after a survey earlier this year showed that two-thirds of minors can illegally purchase tobacco products.

Harshbarger's office announced similar agreements with other chains, Shaw's, Stop & Shop and Purity Supreme, earlier this month.

DeMoulas and Price Chopper agreed in Assurances of Discontinuance filed late yesterday in Suffolk Superior Court to pay a \$1,250 civil penalty for each illegal sale of tobacco. DeMoulas and Price Chopper paid a combined total of \$25,000 for their offenses. Altogether, the five chains paid \$102,500. DeMoulas and Price Chopper also agreed to pay \$3,000 toward the Attorney General's costs of conducting the investigation.

-more-

"These agreements should send a strong message to all tobacco retailers that our office will not tolerate the illegal sale of cigarettes to minors," said Attorney General Harshbarger. "We are prepared to use our authority under the Consumer Protection Act to prevent further such sales in the future."

The two chains also agreed to take a number of steps to eliminate sales of cigarettes to minors, including:

- * provide formal training for all store employees who will potentially sell tobacco products;
- * limit the number of locations within the store from which tobacco products can be purchased;
- * eliminate cigarette vending machines from all stores; and
- * eliminate free-standing, in-store cigarette displays.

Assistant Attorneys General George Weber, chief of the Consumer Protection and Antitrust Division, and Steve Berenson handled the matter. Harshbarger also thanks Commissioner David Mulligan of the Department of Public Health for his assistance in the matter.



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NEWS RELEASE

FOR IMMEDIATE RELEASE
DECEMBER 30, 1994

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HARSHBARGER ISSUES RECOMMENDATIONS AIMED AT
REDUCING TOBACCO USE BY MINORS

Attorney General Scott Harshbarger today joined 27 other Attorneys General in issuing recommendations aimed at reducing illegal sales of tobacco products to minors and the use of tobacco by minors.

The recommendations are contained in a report based largely on findings made during meetings held at Harshbarger's office between representatives from a working group of 12 state Attorneys General, including Harshbarger, and representatives from the nation's largest tobacco retailers.

Among the recommendations made to tobacco retailers are the following:

- * Implement "secret shopper" programs to monitor compliance with laws relating to tobacco sales to minors;
- * Utilize price scanner technology to require cashiers to verify a potential buyer's age;
- * Require government-issued photo ID's for proof of age;
- * Implement vigorous training programs for employees regarding sale of tobacco to minors.

(more)

Among the recommendations made to state legislators are the following:

- * Be wary of legislation introduced by the tobacco industry;
- * State legislation should not pre-empt local ordinances;
- * States should adopt a licensing system with regard to the sale of tobacco products.

"Our office has vigorously pursued illegal sales of tobacco products to minors in the Commonwealth, and has been a leader and an innovator with regard to this nationwide law enforcement and public health problem," said Harshbarger. "I am very pleased to join with 27 other Attorneys General in taking steps to address this problem on a nationwide basis."

The report notes that an estimated 3,100,000 American teenagers are regular smokers, and that an additional 3,000 minors become smokers every day.

Among the retailers who attended the meetings in Harshbarger's office were representatives from chains of national convenience stores, gas stations, supermarkets, discount stores and drug stores, as well as representatives from their national trade associations.

The working group members were able, through the meetings, to obtain detailed information on the retailers' policies and practices regarding the sale of tobacco to minors.

Copies of the report are available through the Attorney General's office.

Assistant Attorney General Steve Berenson of Harshbarger's Consumer Protection and Antitrust Division served as Harshbarger's representative to the working group.

(end)



The Commonwealth of Massachusetts
Office of the Attorney General
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NEWS RELEASE

SCOTT HARSHBARGER
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FOR IMMEDIATE RELEASE
JULY 21, 1995

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(617) 727-2543

ATTORNEY GENERAL HARSHBARGER ANNOUNCES RESULTS OF STING
ON YOUTH ACCESS TO FREE SAMPLES OF SMOKELESS TOBACCO

Attorney General Scott Harshbarger today announced the results of a sting operation conducted by his office in which 22 minors received free samples of smokeless tobacco through the mail.

The sting, conducted over a five-to-six-month period earlier this year, was designed to determine the availability of free samples of smokeless tobacco to Massachusetts minors. High school and junior high school students who participated in the sting, all minors, were asked to send in coupons requesting free samples of Skoal-brand moist smokeless tobacco.

The coupons were obtained by the Attorney General's Office from magazines purchased in Massachusetts, and from promotional displays in stores. Many of the coupons used were part of a promotional campaign that also offered free tickets to a rock concert.

The students filled in the coupons with their actual names, addresses and phone numbers, but listed their ages as 18 or older. Of the 30 minors who requested the free samples, 22 received the product through the mail. One minor received concert tickets, but no tobacco samples, and the remaining seven minors received no response.

A study conducted by the Massachusetts Department of Public Health has shown that the use of smokeless tobacco by high school and junior high school students in the state has risen dramatically. High school students more than tripled their use from 1987 to 1993 (see Table 1). The increase among junior high school students more than tripled over a shorter period from 1990 to 1993 (see Table 2).

Assistant Attorneys General George Weber, Chief of Harshbarger's Consumer Protection and Antitrust Division, Steve Berenson and Michael Hering handled the case.

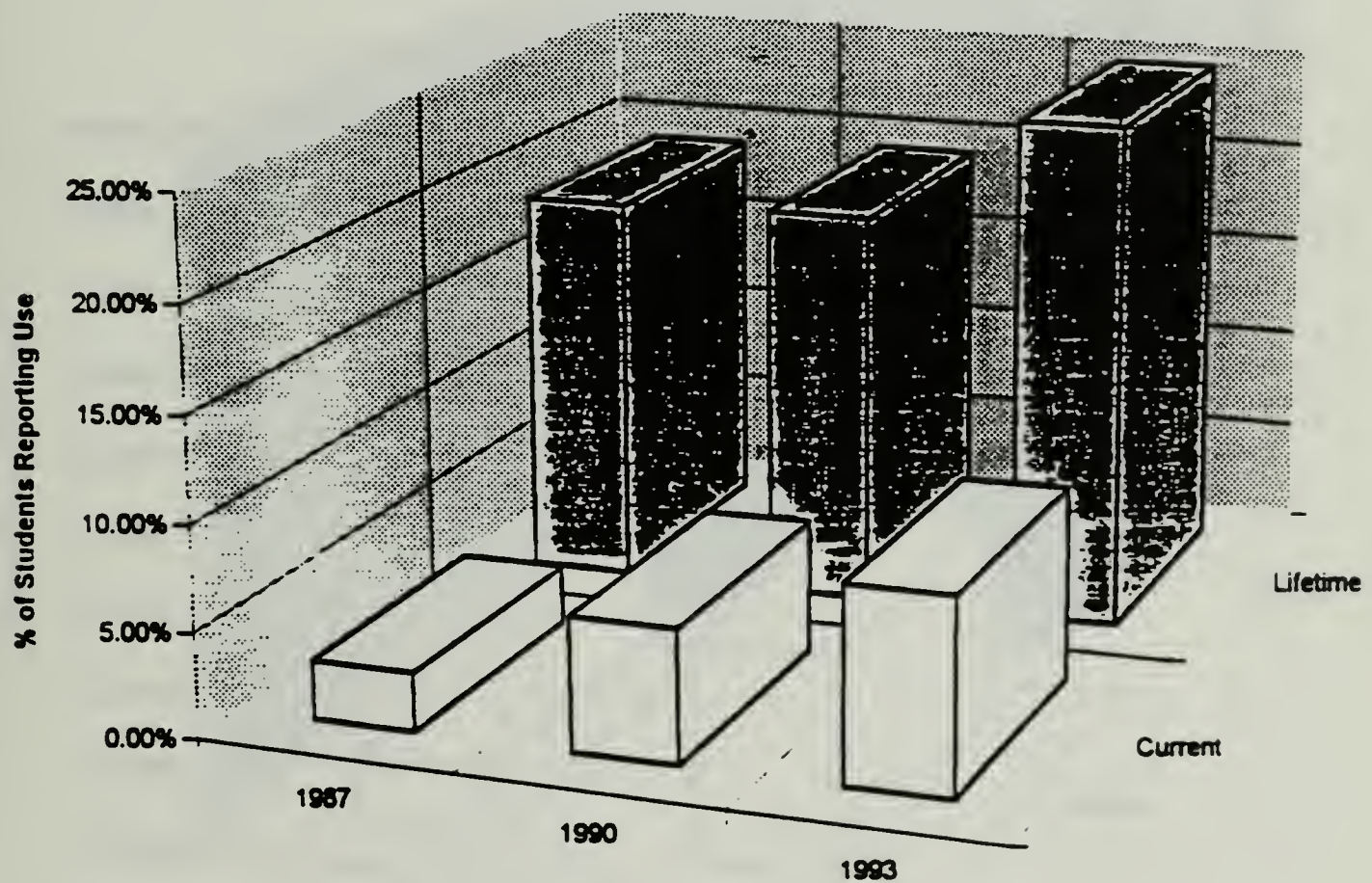
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Table 1

**Lifetime and Current Smokeless Tobacco Use
Among Massachusetts Public School Adolescents**

Grades 9-12

| | 1987 | 1990 | 1993 |
|----------|-------|--------|--------|
| Current | 2.80% | 6.40% | 9.30% |
| Lifetime | 19% | 19.30% | 24.60% |



Current Use: used at least once in 30 days prior to survey

Lifetime Use: used at least once in lifetime

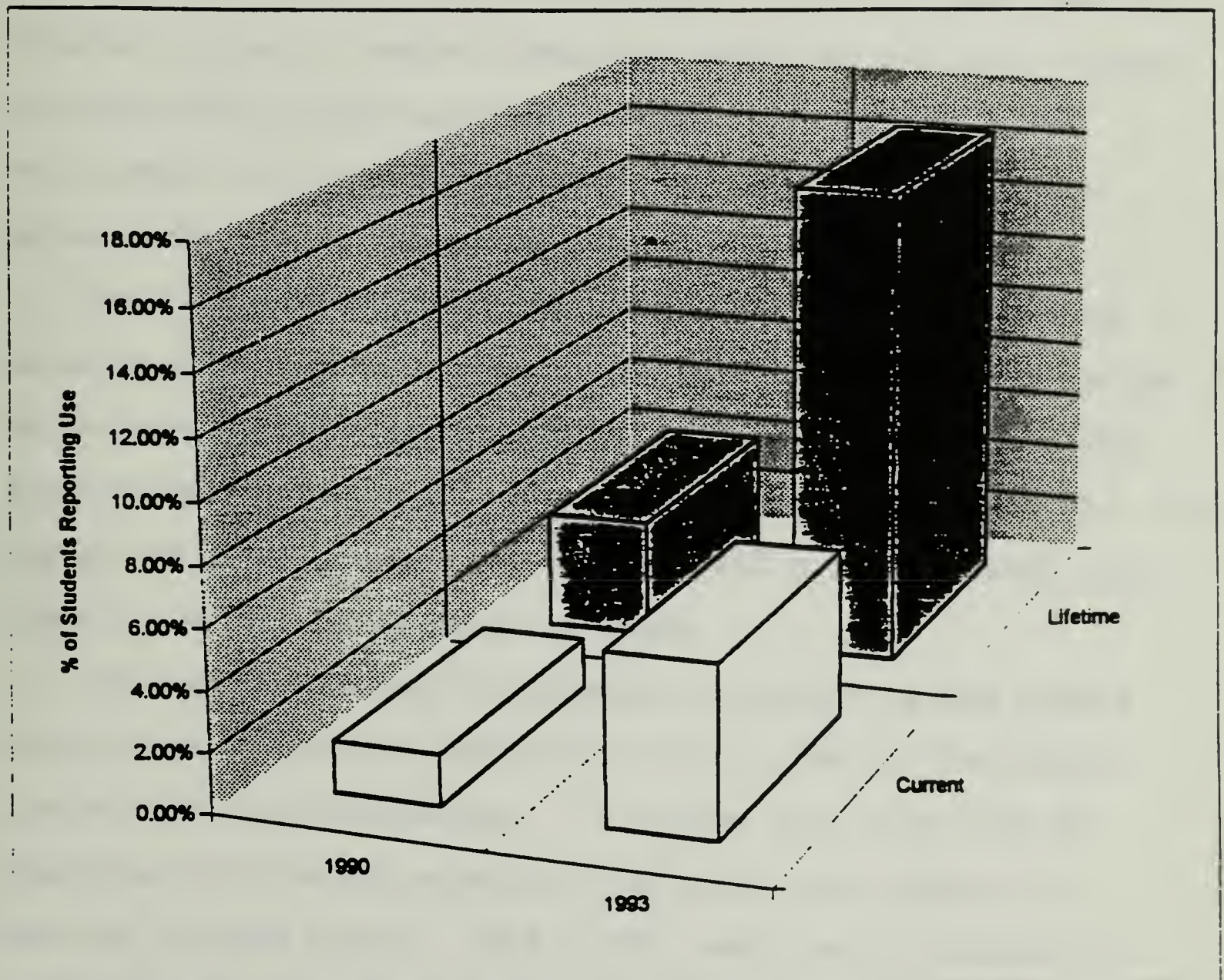
Source: Massachusetts Department of Public Health Study "Tobacco, Alcohol, and Other Drug Use Trends Among Massachusetts Public School Adolescents, 1984-1993"

Table 2

Lifetime and Current Smokeless Tobacco Use Among Massachusetts Public School Adolescents

Grades 7-8

| | 1990 | 1993 |
|----------|-------|--------|
| Current | 1.70% | 5.70% |
| Lifetime | 4.10% | 16.40% |



Current Use: used at least once in 30 days prior to survey

Lifetime Use: used at least once in lifetime

Source: Massachusetts Department of Public Health Study "Tobacco, Alcohol, and Other Drug Use Trends Among Massachusetts Public School Adolescents, 1984-1993"



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N E W S R E L E A S E

FOR IMMEDIATE RELEASE
AUGUST 10, 1995

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(617) 727-2543

HARSHBARGER PRAISES PRESIDENT'S PLAN TO CURB TEEN SMOKING

Attorney General Scott Harshbarger today praised President Clinton's plan to reduce smoking by American children, noting that the White House proposal complements aggressive law enforcement efforts already under way in Massachusetts to prevent the use of tobacco products by young people.

Mr. Clinton's plan includes the elimination of vending machine sales and mail order sales of tobacco products, a ban on outdoor advertising of tobacco products near schools and playgrounds, and a ban on the sale or giveaway of products that appeal to young people, such as caps and gymbags, which carry tobacco product brand names or logos.

"We must do everything possible to prevent young people from becoming the next generation of victims of the tobacco industry," said Harshbarger. "I praise this bold step by President Clinton to safeguard the health and welfare of America's young people. And I will continue my efforts to crack down on the sale and use of tobacco by minors."

Recent law enforcement initiatives by Harshbarger have demonstrated how easy it is for minors to obtain addictive and deadly tobacco products.

(more)

* Last month, Harshbarger announced the results of a sting conducted by his office in which 22 minors received free samples of smokeless tobacco through the mail from United States Tobacco Company simply by filling out coupons found in magazines and stores. As a result, the Attorney General's office has informed USTC of its intention to file a lawsuit for violation of the Massachusetts consumer protection law.

* In April, 1994, Harshbarger released the results of a survey on retailer compliance with laws prohibiting the sale of tobacco to minors. The survey showed that young people who attempted to purchase tobacco products at stores in communities throughout the Commonwealth were successful nearly two-thirds of the time. As a result, Harshbarger reached agreements with five supermarket chains requiring them to take specified steps to eliminate the sale of cigarettes to minors, including the removal of cigarette vending machines. The chains also paid a total of \$102,500 in civil penalties for illegal sales.

In addition, a proposed lawsuit against tobacco companies to recover Medicaid costs associated with treating smoking-related illnesses is under intense review by Harshbarger's office.

(end)

**STATEMENT OF ATTORNEYS GENERAL
IN SUPPORT OF THE PRESIDENT'S ANNOUNCEMENT
ON RESTRICTING TOBACCO SALES TO YOUTH**

"As the chief law enforcement officers of our respective states, we applaud President Clinton's proposals to help prevent another generation of American kids from dying of tobacco-related diseases. Since about 90 percent of smokers begin smoking illegally as teenagers, the President's focus on kids is right on target. Cracking down on illegal sales to kids, controlling marketing aimed at youngsters and improving public education are all key to helping break the cycle of tobacco addiction. It's a problem that kills more Americans than homicides, illegal drugs, car accidents, suicides and AIDS, combined."

HUBERT H. HUMPHREY III
Attorney General
State of Minnesota

JEFFREY B. PINE
Attorney General
State of Rhode Island

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

TOM MILLER
Attorney General
State of Iowa

J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland

SCOTT HARSHBARGER
Attorney General
State of Massachusetts

MIKE MOORE
Attorney General
State of Mississippi

DREW EDMONDSON
Attorney General
State of Oklahoma

JAN GRAHAM
Attorney General
State of Utah

JAMES DOYLE
Attorney General
State of Wisconsin

WINSTON BRYANT
Attorney General
State of Arkansas

GRANT WOODS
Attorney General
State of Arizona



SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

NEWS RELEASE

FOR IMMEDIATE RELEASE
SEPTEMBER 28, 1995

CONTACT: JOHN LAMONTAGNE
(617) 727-2543

***LETTER FROM HARSHBARGER
REGARDING TOBACCO DISCLOSURE***

The following letter was sent to Sen. Marc Pacheco, D-Taunton, and Rep. John McDonough, D-Jamaica Plain, the chairmen of the Joint Committee on Health Care.

Because the bill could involve future litigation, the Attorney General's Office will make no further comment on this matter.

-end-



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

September 27, 1995

The Honorable Marc R. Pacheco
The Honorable John McDonough
Joint Committee on Health Care
State House, Room 130
Boston, MA 02133

Dear Chairmen Pacheco and McDonough:

The Attorney General has asked me to respond to your letter seeking a formal opinion regarding the legal interpretation of Senate Bill 1982, An Act to Provide for Disclosure of Certain Information Relating to Tobacco Products Sold in the Commonwealth. I regret to inform you that we cannot, for the reason stated below, render a formal opinion on this matter.

Under the Attorney General's opinions guidelines, the Attorney General does not opine on questions that are the subject of pending or potential litigation. As you know, persons submitting testimony to the Committee have made express or implied indications that persons will commence legal action against the Commonwealth if Senate Bill 1982 becomes law. Accordingly, pursuant to our guidelines, we are not issuing a formal opinion in these circumstances.

Nonetheless, I note that the Office of the Attorney General has reviewed thoroughly the legal questions relating to Senate Bill 1982. I am authorized to inform you that the Attorney General would provide a legal defense of Senate Bill 1982 should the measure become law.

I hope this information is useful to you. Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Green".

Thomas H. Green
First Assistant Attorney General

cc: Jesse Stanesa, Aide to Senator Pacheco
Carla Cicerchia, Aide to Representative McDonough



SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

NEWS RELEASE

FOR IMMEDIATE RELEASE
OCTOBER 6, 1995

CONTACT: JOHN LAMONTAGNE
(617) 727-2543

***U.S. TOBACCO ADOPTS ADDITIONAL SMOKELESS
TOBACCO SAFEGUARDS IN MASSACHUSETTS***

U.S. Tobacco Company has agreed to increase safeguards to prevent free samples of smokeless tobacco from illegally reaching children and teenagers in Massachusetts, Attorney General Scott Harshbarger announced today.

In an agreement filed today in Suffolk Superior Court by Harshbarger's Consumer Protection and Antitrust Division, U.S. Tobacco agreed to require copies of drivers licenses and other measures before sending free samples of their Skoal smokeless tobacco products.

The agreement comes after Harshbarger's office sent a demand letter to the company informing it of the Attorney General's intent to sue U.S. Tobacco if an agreement was not reached. That letter was sent in response to a sting operation in which 22 Massachusetts minors, working under the direction of the Attorney General's Office, were able to have free samples of Skoal sent to them by merely stating on a coupon they were over 18 years of age.

The agreement with Harshbarger requires U.S. Tobacco:

- * Not to provide a free sample of smokeless tobacco in response to its mail-in coupons unless the person seeking the sample provides a legible photocopy of a valid drivers' licenses indicating the person is 18-years-old or older;
- * To verify that the person is 18 by using his or her license number in conjunction with commercially available databases that indicate the age of an individual with a particular license number; and

(more)

(2)

- * Make random telephone calls to Massachusetts residents who receive tobacco products through the mail in order to ensure they are 18 or older.

Finally, U.S. Tobacco agreed to pay \$40,000 to the Local Consumer Aid Fund, which funds consumer programs that mediate consumer disputes.

The high school and junior high school students who participated in the Attorney General's sting were asked to send in coupons requesting free samples of Skoal. Harshbarger's office obtained the coupons from magazines purchased in Massachusetts and from promotional displays in stores in the state.

Many of the coupons used were part of a promotional campaign that also offered free tickets to a rock concert.

The students filled out the coupons with their actual names, addresses and phone numbers, but listed their ages as 18 or older. Of the 30 students requesting the free samples, 22 received the samples through the mail. One minor received concert tickets, but no tobacco samples, and the remaining seven received no response at all.

"Smokeless tobacco and chewing tobacco has been shown to cause serious health problems in some cases, and it's disturbing to learn that our children are increasingly taking up the habit," said Attorney General Harshbarger. "This agreement is a cooperative step we can take to try and keep our children from trying smokeless tobacco by means of a free sample."

A study conducted by the state Department of Health determined that use among high school students more than tripled from 1987 to 1993. An even greater increase was found among junior high school students, whose use of smokeless tobacco more than tripled over the shorter period of 1990 to 1993.

Assistant Attorneys General George Weber, chief of the Consumer Protection and Antitrust Division, Steve Berenson and Michael Hering, handled the case.

(end)

Section III

Liggett Settlement News Release



Attorney General's Statement on Liggett Settlement



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

NEWS RELEASE

FOR IMMEDIATE RELEASE:
MARCH 15, 1996

CONTACT: DEBBIE BANDA
(617) 727-2543

**HARSHBARGER, FOUR OTHER ATTORNEYS GENERAL REACH
HISTORIC SETTLEMENT WITH TOBACCO MAKER**

Attorney General Scott Harshbarger and Attorney General Mike Moore of Mississippi, Bob Butterworth of Florida, Darrell McGraw of West Virginia and Richard Ieyoub of Louisiana, today announced that they have reached an historic, multi-million dollar settlement with Liggett Group, Inc., and Liggett's parent company, Brooke Group Ltd., of their lawsuits seeking compensation from the tobacco industry for the cost paid by taxpayers to treat indigent citizens suffering from tobacco-related illnesses.

According to the settlement, Liggett will refrain from marketing cigarettes to children and teenagers, provide funds to states for the health costs of treating people with tobacco-related illnesses, and cooperate with the attorneys general in their continuing lawsuits against other tobacco companies.

Liggett will also withdraw its objection to proposed regulations by the U.S. Food and Drug Administration limiting the advertising of tobacco products aimed at children, and will enter into immediate voluntary compliance with most of the proposed rules, including those prohibiting the use of cartoon characters, advertising on specialty clothing and advertising on billboards within 1,000 feet of schools and municipally-owned playgrounds.

"What this agreement represents is an unprecedented and, in my opinion, long overdue intersection of corporate interests with the public interest," said Attorney General Harshbarger. "For the first time, two opposing forces in the tobacco litigation battle have spent their time and money trying to find common ground for the public good instead of waging a costly and

(more)

destructive war of attrition with lawyers and lobbyists. Hopefully, it will cause the other members of the tobacco club to take a step back and perform a cost-benefit analysis of their positions and rethink where they want to go from here."

The settlement is expected to include RJR Nabisco if its shareholders elect a Brooke Group slate to the corporation's board of directors. The new board would spin off the company's food business and submit to shareholders a proposal to merge with Liggett. If the shareholders approve the merger, RJR, which has 25 percent of the tobacco industry's market share, would be bound by the agreement. If another company with less than 30 percent of the tobacco market merged with Liggett instead, it would also be bound.

As to monetary compensation, Liggett and, pending the shareholder vote, RJR or another affiliate agree to:

- Pay \$135 million up front to Massachusetts, Florida, Louisiana, Mississippi and West Virginia in compensation for past and current expenses incurred in providing medical care to state residents suffering from smoking-related diseases. Liggett's initial payment would be \$1 million immediately and \$4 million in equal annual installments over the next nine years.
- Cover future tobacco-related state health care costs by paying the five settling states the greater of 2.5 percent of their pre-tax profits or \$30 million (adjusted for inflation) annually over the next 25 years.
- Establish a fund for other states that have not yet filed lawsuits against the tobacco industry but may choose to do so in the future. Initially, Liggett and RJR, or another affiliate, would pay \$25 million to this fund. Then, over the next 25 years, they would pay annually the greater of \$50 million or 5 percent of their pre-tax profits. The money would be distributed to participating states based on their pro rata share of the Medicaid population.

If there is an affiliation between Liggett and RJR or another tobacco company, total compensation to the states would be \$160 million initially and could reach approximately \$2 billion over the life of the agreement.

(more)

"This historic settlement is one that Liggett would not have made unless it recognized that the taxpayer suits against the cigarette industry rest on so powerful a basis of fact and law that it is only a matter of time until justice finally prevails and the companies that failed to settle suffer a crushing defeat in court," said Laurence Tribe, Professor of Law at Harvard Law School, and pro bono Special Assistant Attorney General of Massachusetts.

The settlement resulted from intense negotiations between Liggett and the attorneys general that preceded those held over the *Castano* nicotine addiction class action lawsuit talks, and closely shaped the *Castano* settlement announced on Wednesday.

In addition to the staff of the attorney general's office, attorneys from the Boston law firm of Brown, Rudnick, Freed & Gesmer, which is also acting as Special Counsel on the Massachusetts lawsuit, were involved in the negotiations. Two other Boston firms - Thornton, Early and Naumes, and Schneider, Reilly, Zabin & Costello - and two national law firms - Ness, Motley, Loadholt, Richardson & Poole, and Lieff, Cabraser, Heimann & Bernstein - are also Special Counsel on the Massachusetts lawsuit.

(end)



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

MEDIA ADVISORY

FOR IMMEDIATE RELEASE
MARCH 15, 1996

CONTACT: DEBBIE BANDA
(617) 727-2543

STATEMENT FROM ATTORNEY GENERAL HARSHBARGER
ON THE SETTLEMENT WITH LIGGETT GROUP, INC.

The following statement was issued today by Attorney General Scott Harshbarger about the settlement with the Liggett Group, Inc.:

"From the beginning, the bottom line goal of our litigation has been to convince big tobacco interests to play by the same rules that every legitimate industry has to play by. We want them to disclose what they know about their products and to take responsibility for the consequences of their products and actions.

"Today, after nearly 50 years of denial, deception and stonewalling, we are a giant step closer to making that happen for our taxpayers and our children. What this tentative agreement represents is an unprecedented and, in my opinion, long overdue intersection of corporate interests with the public interest.

"For the first time, two opposing forces in the tobacco litigation battle have spent their time and money trying to find common ground for the public good instead of waging a costly and destructive war of attrition with lawyers and lobbyists. My hope is that this agreement will serve as a common sense foundation on which we can frame a more productive debate from now on. Hopefully, it will cause the other members of the tobacco club to take a step back and perform a cost-benefit analysis of their positions and rethink where they want to go from here.

"At the very least, tobacco shareholders -- as citizens -- will take stock, take control and steer their companies toward a more reasonable future course. How the remainder of the industry proceeds from here will determine whether today's agreement is just one historic beachhead in a long legal assault, or the beginning of the end of the war to make big tobacco interests assume an appropriate dose of corporate responsibility.

"For today, at least, we have harnessed corporate interests to secure an invaluable public good for our taxpayers and our children. Thank you."

(end)

Section IV

Testimonials

Testimonials



Relevant Media Clippings

Testimonials



*Providing answers.
Saving lives.*

**AMERICAN CANCER SOCIETY
Massachusetts Division, Inc.**

**Board of Directors Meeting
September 20, 1995**

MINUTES

Pursuant to call and notice and in accordance with the laws and bylaws of the Corporation, a meeting of the Board of Directors of the American Cancer Society, Massachusetts Division, Inc., was held at the Carhart Memorial Building, 247 Commonwealth Avenue, Boston, Massachusetts on Wednesday, September 20, 1995 at 5:30 p.m.

As part of the meeting:

Upon motion made and seconded and by the affirmative vote of all members present, it was:

VOTED: that the Board of Directors will support the Massachusetts Attorney General in moving forward in his efforts to file suit against the tobacco industry, by assisting and guiding his office regarding the health risks of tobacco use and the costs to residents of the Commonwealth, and by organizing the support of statewide volunteers, including American Cancer Society Tobacco Control Advocacy Teams. Further, the Division will activate the support of the Massachusetts Coalition for a Healthy Future to build a broad base of citizen support for the Attorney General's action.

###

American Cancer Society • Massachusetts Division, Inc.
30 Speen Street • Framingham, MA 01701-1800 • Phone 508-270-4600 • 1-800-932-7430 in Mass. • Fax 508-270-4699
For cancer information call 1-800-ACS-2345



MASSACHUSETTS MEDICAL SOCIETY

1440 Main Street, Waltham, Massachusetts 02154-1649 (617) 893-4610 / 1-800-322-2303 Fax (617) 893-4611

President: Stephen M. ...
Vice President: ...
Secretary: ...
Treasurer: ...
Past President: ...
Immediate Past President: ...

30 November 1995

Attorney General L. Scott Harshbarger
One Ashburton Place
20th Floor
Boston, Ma 02108

Dear Attorney General Harshbarger:

This week's filing in Federal Court of a suit against you by representatives of the tobacco industry has brought out the industry's concern over their liability for the damages caused by their products and the weakness of their defenses, both morally and legally. The industry has sought to hide behind the constitution before in its smokers' rights campaigns of the past few years. I am sure that its efforts to use the commerce clause and due process arguments will have little effect legally and will be a public relations disaster for the industry.

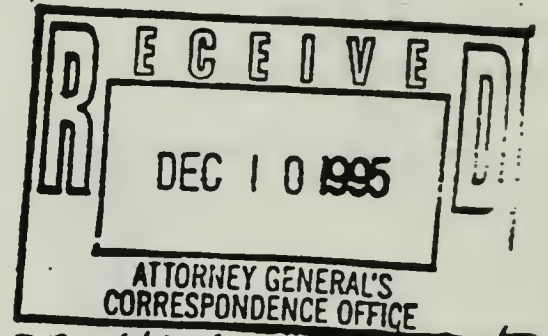
I believe that the tobacco industry's choice of Massachusetts as the first area in which to file a preemptive strike indicates their serious concerns with the success we are having in reducing cigarette sales through the programs funded by the cigarette tax. Your efforts to recover damages for the costs associated with tobacco use are already helping to inform the public about the dangers of smoking and about the real concerns of the tobacco industry. If you are successful in your suit, we may succeed in making smoking history in Massachusetts.

Although your resources are limited and you must establish your priorities carefully in their use. I urge you to remain vigilant in your efforts to shift costs for damages to the real cause of so much pain and suffering. This is a worthy and innovative struggle which you have undertaken. Keep up the good work.

Sincerely,

Harry L. Greene II, M.D.

Daniel Merline
73 Richard Dr
Hanover, MA 02339
12-7-95



Dear Attorney General Harshbarger,

I am writing to congratulate you on your initiative to force the tobacco industry to pay the costs of smoking related illnesses of Medicaid recipients.

I believe the only way we as a state and as a Nation can curtail the powerful Tobacco Industry is if we hit them where it hurts - in the "pocketbook".

We are all now aware of how the tobacco industry has deceived its consumers and lied at Congressional hearings of the addictive nature of their products.

I wish you luck in your quest.

Sincerely,

Daniel Merline

GERRY E. STUDDS
TENTH DISTRICT, MASSACHUSETTS

COMMITTEE ON MERCHANT MARINE
AND FISHERIES
CHAIRMAN

SUBCOMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES
CHAIRMAN

COMMITTEE ON ENERGY
AND COMMERCE

SUBCOMMITTEE ON HEALTH
AND THE ENVIRONMENT

SUBCOMMITTEE ON TRANSPORTATION
AND HAZARDOUS MATERIALS



Congress of the United States
House of Representatives

WASHINGTON
237 CANNON BUILDING
WASHINGTON, DC 20515-2110
202-225-3111

SOUTH SHORE 1-800-794-8911

QUINCY
1212 HANCOCK STREET
QUINCY, MA 02169

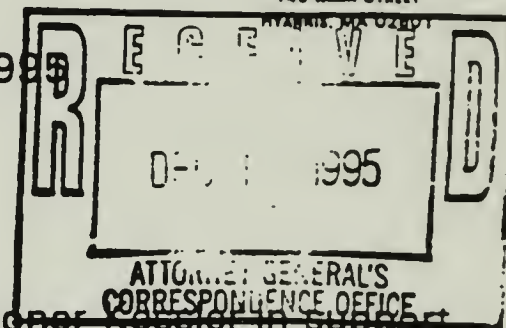
BROCKTON
FEDERAL BUILDING
166 MAIN STREET
BROCKTON, MA 02401

PLYMOUTH
225 WATER STREET, SUITE 401
PLYMOUTH, MA 02360

CAPE COD AND ISLANDS 1-800-870-21

HYANNIS
146 MAIN STREET
HYANNIS, MA 02601

December 4, 1994




Dear Mr. Harshbarger:

Thank you for sending me a copy of your letter to Commissioner Regan in support of the President's proposal to regulate the sale of tobacco products to young people.

We are in complete agreement. Tobacco use kills 420,000 Americans each year, making it the leading preventable cause of death in this country. Every day, 3,000 children and adolescents take up the habit that will ultimately make them a part of that grim statistic.

As a member of the Health Subcommittee, I have long believed that regulation of tobacco is essential if we are to make progress against this threat to our children and our future as a nation. In November, I joined with some 50 of my House colleagues in signing a "Commitment to our Children" which pledges to support the President's initiative and to oppose legislation that would prevent the FDA from carrying it out.

I appreciate your taking the time to share your thoughts with me. Please do not hesitate to contact me about this or any other matter of concern.

With kind regards.

Sincerely,


Gerry E. Studds

The Honorable Scott Harshbarger
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1698

**PAMILA LAFFIN
MALDEN, MA**

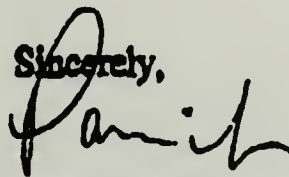
December 15, 1995

I am a 26 year old mother of two. Just about sixteen years ago, I made a decision that has impacted my life and so many other people's lives in a negative way. I was ten years old when I made the choice to smoke cigarettes. At the time, there were no warning labels on the packages and I had never even heard of emphysema. I was addicted so badly by age eleven that I lied one afternoon to my school nurse and said I wasn't feeling well and needed to go home, just so I could have a cigarette. By the time the warning labels came out on cigarettes, when I was sixteen, I was too far into my habit to even care.

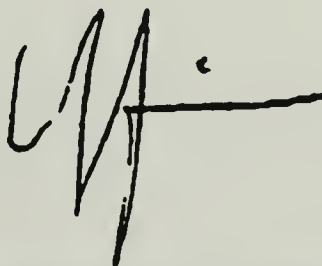
Last May, the emphysema I had developed as a result of my smoking became so severe that I required a lung transplant. Because I am on Medicaid, that procedure and all of my treatment has cost the taxpayers of this state more than a quarter of a million dollars, and that cost will continue to rise.

I take some responsibility for my condition, of course, but I became addicted to smoking cigarettes long before I knew the risk I was taking. My innocence at age ten led me to believe that if cigarettes were so dangerous, I would not be able to get them. How could I know that this product was, in fact, a deadly killer?

Sincerely,



Pamila Laffin

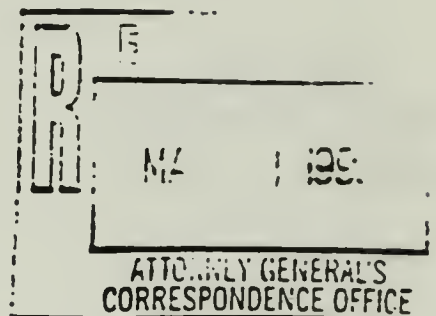




CARHART MEMORIAL BUILDING • 247 COMMONWEALTH AVENUE • BOSTON MA 02118
PHONE 617-267-2650 • 1-800-952-7664 • FAX (617) 536-3163

May 8, 1995

The Honorable L. Scott Harshbarger
1 Ashburton Place
Boston, MA 02108



Dear Scott:

Thank you for meeting with representatives of the American Cancer Society and other tobacco control advocates to discuss the tobacco control budget, as well as the Massachusetts lawsuit against the tobacco industry. We appreciate your leadership in supporting these and other tobacco control efforts.

As you know, we are asking the legislature to support level funding (\$77 million) of the Massachusetts Tobacco Control Program. The governor and House have supported this request and we are now working diligently to persuade the Senate to do the same. Any messages that you can send over in support of level funding will be helpful.

We are, of course, thrilled with the lawsuit and will do all that we can to be supportive. I am certain there are many other ways we can be mutually beneficial to each other and we look forward to discussing those possibilities at future meetings.

Thank you again for the time, energy and interest that you and your staff are dedicating toward eliminating this very serious public health problem.

Sincerely,

Candace Pierce-Lavin
Director of Government Affairs and Tobacco Control Programs
American Cancer Society

cc: Don Gudaitis, Executive Director, American Cancer Society
Dr. Blake Cady, Chief, Division Of Surgical Oncology,
New England Deaconess Hospital
Al Minahan, Lobbyist, American Cancer Society

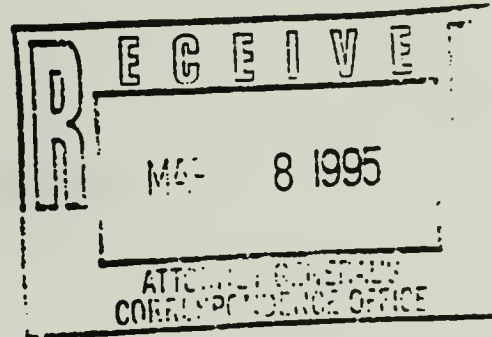


The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES

COMMITTEE ON HEALTH CARE
OFFICE OF THE CHAIR

CARMEN D. BUELL
REPRESENTATIVE
2ND FRANKLIN DISTRICT
113 BEACON STREET
GREENFIELD, MA 01301
TEL. (413) 772-6752

CHRISTOPHER WOODCOCK
SENIOR ADMINISTRATIVE ASSISTANT



ROOM 130
STATE HOUSE
BOSTON, MA 02133-105
TEL. (617) 722-2130
KATHERINE P. ANDREWS
STAFF DIRECTOR
DAVID M. WEBSTER
RESEARCH DIRECTOR

March 8, 1995

The Honorable L. Scott Harshbarger
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Dear Attorney General Harshbarger:

On Wednesday, March 29, the Joint Committee on Health Care will hold a public hearing on legislation related to smoking and tobacco control. I would be honored if you could attend to provide committee members with a briefing on your proposed lawsuit to recoup Medicaid losses from the tobacco industry.

Your decision to place Massachusetts at the forefront of a bold national movement is exciting and inspirational for those us involved in health care policy. I support your efforts on behalf of the taxpayers of Massachusetts and responsible public health policy.

The hearing will begin at 11 a.m. in Room B2 at the State House. I would be pleased if you could open the hearing with a short presentation for the committee. Dr. Greg Connolly of the Department of Public Health's Tobacco Control Program will also be on hand to testify.

Please contact me to let me know if you will be able to attend. Thank you for your time and attention.

Sincerely,

Representative Carmen H. Buell
House Chair
Joint Committee on Health Care



AVON BOARD OF HEALTH
TOWN OFFICES / BUCKLEY CENTER / 588-0414
AVON, MASSACHUSETTS 02322

5 1995

ATTORNEY GENERAL'S
CORRESPONDENCE OFFICE

March 9, 1995

Attorney General Scott Harshbarger
1 Ashburton Place
Boston, Ma

Dear Mr. Harshbarger,

Avon Board of Health applauds and encourages you in your case against the Tobacco Industry.

The tobacco industry has persisted in drawing youth into the smoking community. They deny the adverse health affects and addictive nature of tobacco and tobacco products. This has undeniably caused disease, illness, suffering, and premature death of our citizens. That you should look to recoup medical costs to the state is an appropriate means of drawing the tobacco industry's attention to the reality of their irresponsibility.

On behalf of Avon's residents, thank you for this effort.

Sincerely,

Gerald Picardi, Chairman, Avon Board of Health

Thomas Grenham, Member, Avon Board of Health

Richard Mercuri, Member, Avon Board of Health

Barry Perkins, Health Agent, Avon Board of Health



SUFFOLK UNIVERSITY LAW SCHOOL
Beacon Hill
41 Temple Street
Boston, Massachusetts 02114

Student Bar Association

phone: (617) 573-8174

Scott Harshbarger Esq.
Attorney General
One Ashburton Place,
Boston MA. 02108-1698

March 26, 1996

Dear Scott,

Congratulations on your success in holding the tobacco industry accountable to the victims of their products. Both of my parents died from lung cancer as a result of a life-long smoking habit. I see this as another fine example of your focus on protecting the vulnerable, both the very young who are targeted by the tobacco industry and the elderly who have been victimized by the industry most of their lives.

Many years ago I was influenced by a comment that my father made after Ralph Nader took on General Motors and the automobile industry. He said that Mr. Nader's advocacy for the little guy would save more lives than were lost in World War II.

I'm certain that he would say the same of your accomplishment, thank you.

Yours sincerely,

James M. McCaffrey
President, Law Student Division,
American Bar Association.

Relevant Media Clippings

Teens getting cigarettes

Harshbarger survey finds most stores make illegal sales

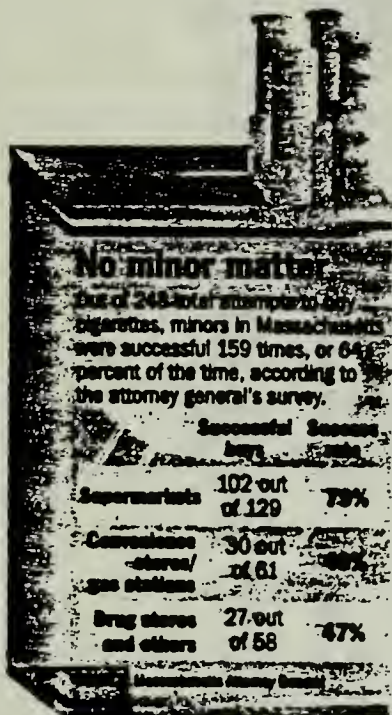
By John H. Kennedy
GLOBE STAFF

Teens under the age of 18 in Massachusetts can often buy cigarettes as easily as they buy junk food.

"I just went into a store and picked up a pack of gum and bought cigarettes," said Joanna Au, a 17-year-old high school senior from Framingham. "It wasn't hard for me."

Au was among 42 teens under age 18 who fanned out around the state on behalf of Attorney General Scott Harshbarger's office, and came back with startling results: stores routinely violate the law by selling to youths under 18.

At 109 stores in 23 cities and towns across the state, the underaged youths were able to buy cigarettes 64 percent of the time, according to the findings announced yesterday.



The results, which have prompted Harshbarger's office to threaten lawsuits against the worst offenders, comes amid the state's \$52 million multi-front war against smoking, targeting youths in many of their educational messages.

"It appears that cigarettes are freely available, being freely sold to children in the commonwealth, including children as young as 13 years of age," said George K. Weber, an assistant attorney general.

While Harshbarger's office declined to identify the offenders, local and national chains were targeted in the survey, rather than individual businesses because chains play a larger role in reducing the sale to those under age.

Five of the worst offenders have been sent letters saying they soon face lawsuits, which could result in fines of up to \$5,000 per violation, if they don't reach an accommodation

CIGARETTES, Page 67

Continued from page 66
with the attorney general's office. "They are big companies," said Weber.

Antitobacco activists and health officials have consistently accused tobacco companies of targeting youths as older smokers either die or quit.

While smoking among adults has decreased steadily over the past several years, declines among adolescents appear to have leveled off. And statistics show that 75 percent of smokers get addicted to tobacco before their 18th birthday, according to Harshbarger.

In a Massachusetts survey last year, 93 percent of high school students surveyed and 70 percent of junior high students said they can "very-to-fairly easily" buy tobacco, said Dr. Gregory Connolly, who heads the Department of Public Health's antismoking campaign.

"It probably is harder to go out and buy a Hostess Twinkie than it is to find Camels or Marlboros," said Connolly, who called Harshbarger's intentions to sue under the Consumer Protection Act "historic."

According to the attorney general's survey, supermarkets were the worst offenders, making illegal sales to minors 79 percent of the time. Convenience stores and gas stations made the sales 49 percent of the time, as did other stores, including drug stores.

At least one representative of the retail stores said she was not surprised by the survey results, adding that industry efforts are underway to try to reduce the problem.

Only a couple of years ago, nearly 80 percent of the state's convenience stores may have been selling to underage youths, said Cathy Flaherty, executive director of the New England Convenience Store Association, which has 1,000 members in Massachusetts.

"We've been out with our members, training them, giving them materials, instructing them on techniques about how not to sell tobacco to minors," she said. "It's been one of our priorities."

Flaherty cautioned authorities that heavy fines on retailers could be too punitive, especially in an industry with heavy turnover of sales clerks. Rather than fine the store owner, why not fine the sales clerk, she said.

"If he gets fined \$100 for selling to his friends, don't you think he won't do it again?" she said.

The criminal penalty for illegally selling tobacco to minors ranges from a \$100 fine for the first offense to \$300 for the third offense and each thereafter. But health officials traditionally have not had the resources to enforce the law.

Suing stores under the state's Consumer Protection Act, made possible by recent interpretations of the law by the courts, is considered a creative and more effective sanction against stores that persist in selling to minors, said Weber.

To conduct the survey, Harshbarger's office used nonsmoking volunteers, ages 13 through 17. Each was trained and then accompanied by an investigator from the attorney general's office during their attempts to buy.

The report also recommended that cashiers be routinely trained about the laws involving the purchase of tobacco. And they should request proof of age and post notices about the law.

"I went into five stores, and each

time I was able to buy cigarettes," said Au, who says she was never asked for her identification.

In addition, Harshbarger's office recommended that all tobacco be kept behind the counter and any promotions encouraging underage smokers be eliminated.

Globe editorial assistant Sarah A. McNaught contributed to this report.

BOSTON GLOBE
DATE 4.18.94
PAGE 65

Middlesex News

4-28-94

Most stores sell smokes to kids — AG

State sting finds many violations

By Robert W. Trott

ASSOCIATED PRESS
BOSTON — Thanks to negligent merchants, underage Massachusetts teen-agers are having an easy time buying cigarettes, according to the results of a state sting operation.

Attorney General Scott Harshbarger's office recruited 42 youths, ranging from 13 to 17 years old, to try to buy smokes in supermarkets, drug stores, convenience stores and gas stations across the state.

Of 248 attempted cigarette purchases in the past six months, 159 were successful — a rate of 64 percent.

"Given all the attention we've received about the severe health consequences of smoking, it's surprising that retailers are not abiding by the

"This shows that the illegal sales of cigarettes to minors is still much too commonplace throughout Massachusetts."

EDWARD SWEDA
OFFICE ASSISTANT, BUDGING POLLUTION

laws in Massachusetts and (are) making cigarettes readily available to teen-agers," George Weber, head of Harshbarger's consumer protection division, said yesterday.

Current fines for selling tobacco to youths under 18 years range from \$100 to \$300.

SMOKING, NEXT PAGE.

State: Most stores sell smokes to kids

SMOKING, FROM 1A

Harshbarger plans to begin prosecuting violators under the Consumer Protection Act, which guards against deceptive trade practices and allows for fines of up to \$5,000.

Harshbarger would not identify any of the 109 stores that sold cigarettes to the youths, saying he planned to take legal action against some of them.

The Democratic attorney general suggested legislation setting up a licensing system for tobacco sellers similar to what is in place for liquor sales. That would give the state enough oversight to identify and punish sellers who repeatedly sell cigarettes to minors.

He also suggested beefing up regulations on cigarette vending machines. Four communities — Gloucester, Provincetown, Longmeadow and West Springfield — have banned vending machines. Boston, Brookline and Cambridge

have installed locks on vending machines that must be opened by merchants.

Among Harshbarger's other recommendations:

- Buyers should be asked for identification to prove they are old enough to buy tobacco.

- Tobacco should be sold from a limited number of cash registers, by people older than 18 who have received special training about the cigarette sales law.

- Cigarettes and chewing tobacco should be kept behind a counter.

According to a study released in February by the American Journal of Public Health, there are 2.7 million smokers age 12 to 18 in the United States.

In the sting operation, minors had the easiest time buying cigarettes in supermarkets. They were successful on 102 of 120 attempts, or 79 percent.

Drug stores were the toughest on the would-be smokers, who were

able to buy cigarettes only 47 percent of the time.

Underage girls were able to buy cigarettes more readily than boys. Girls were successful on 68 percent of buys, and boys 60 percent.

Edward L. Sweda, spokesman for the Group Against Smoking Pollution, said approximately 38,000 Massachusetts teens start smoking every year, "quite a number to replenish the supply" of smokers who quit.

"This shows that the illegal sales of cigarettes to minors is still much too commonplace throughout Massachusetts," Sweda said. "This type of factual report is a direct contradiction to the tobacco industry," which maintains it does not direct advertising at minors.

Harshbarger recruited youths who had expressed an interest in anti-substance abuse issues at schools and community groups. They had to be non-smokers and get permission from their parents to participate.



NEWS FILE PHOTO

Atty. Gen. Scott Harshbarger plans to begin prosecuting stores that sell cigarettes to minors.

Springfield
Union News
4.28.94
p.10

Most stores found not following state's tobacco sales guidelines

By JACK FLYNN

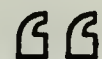
BOSTON — A survey of compliance with tobacco sale laws in 109 stores in the state found that minors were able to buy tobacco products nearly two-thirds of the time.

The survey, conducted by Attorney General Scott Harshbarger's office, found that stores in Springfield, East Longmeadow and Longmeadow sold tobacco products to youths under 18 years of age in violation of state law.

Statewide, the report found violations in 23 different communities with most of the offenses coming in eastern Massachusetts.

"The survey results are extremely disturbing, given the soaring costs of health care and the fact that smoking kills more people than guns do," Harshbarger said. "Preventing kids from ever starting to smoke is critical."

Harshbarger said studies indicate that 3,000 youths become



The survey, conducted by Attorney General Scott Harshbarger's office, found that stores in Springfield, East Longmeadow and Longmeadow sold tobacco products to youths under 18 years of age in violation of state law.



smokers every day, or about 1 million a year, and that most smokers become addicted to tobacco by the age of 18.

The report also pointed out the number of deaths related to smoking each year are four times higher than those linked to alcohol abuse, 17 times higher than those due to homicide, and 44 times higher than for illegal drug overdoses.

Overall, smoking-related illness

cost the nation \$65 million in health care cost every year, Harshbarger's report said.

For the survey, the attorney general's office employed a crew of youths between 13 and 17 years old who sought to buy tobacco products in drug stores, convenience stores, gasoline stations and supermarkets.

In all, the 42 volunteers were successful in buying tobacco products 159 out of 248 attempts, or 64 percent of the time, the survey found.

The report does not name the stores that illegally sold tobacco products, but Harshbarger said his Consumer Protection and Anti-Trust divisions will take action against the most frequent offenders.

Overall, supermarkets were the easiest targets for the volunteers who had a 79 percent success rate in purchases. Convenience stores sold to minors 49 percent of the time, while 47 percent of drug stores violated the law.

BOSTON TAB

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NEW ENGLAND NEWSCLIP AGENCY, INC.

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DC

How to *really* curb smoking

It's the biggest weakness in the fight against smoking: Those under 18 can buy cigarettes or tobacco products with ease, even though it is illegal. And it's about time this avenue for cigarette purchases be closed down so young people do not become addicted to smoking.

Even as strict no-smoking laws are adopted in TAB communities, most minors can buy cigarettes from most stores.

A statewide test by Attorney General Scott Harshbarger came to the same conclusion: Minors are able to walk into stores and buy cigarettes almost any time they want to. The attorney general's office worked with 42 young people between the ages of 13 and 17. In 248 attempts, these youths were able to purchase tobacco 159 times.

The study found that the easiest place to buy cigarettes is a supermarket: The young people successfully made illegal purchases there 80 percent of the time.

Anti-smoking efforts are doomed if the young are still able to easily buy cigarettes. Smokers start young: About 75 percent of all current smokers become addicted by age 18, according to a study from the U.S. Department of Health and Human Services.

Solving this problem will not take a lot of expensive government programs. It requires the education of store owners and changes in the way cigarettes and tobacco products are sold. Many of these same rules already apply to alcohol sales. For example, buyers of tobacco products should be asked for proof of age; cashiers should be trained in the law on selling tobacco products; and all cigarettes and tobacco products should be kept behind the check-out counter.

If these recommendation are followed, it will become a lot harder for teenagers to start smoking. □

BOSTON GLOBE
DATE 2-25-95
PAGE 14

Smoke alarm

The \$37 million devoted to the Massachusetts tobacco control program each year is dwarfed by the tobacco giants, which spend \$115 million peddling their products in the commonwealth. Yet the state has been successful in persuading people to kick the habit. Despite fresh challenges from the tobacco industry, continued commitment to that campaign - combined with potential legal action from the attorney general and help from communities and the private sector - could truly make smoking history.

The state's tobacco control program was established in 1993 after voters approved a 25-cent-per-pack tax to prevent tobacco use and exposure to secondhand smoke. The focus of the program is to assist local communities in adopting ordinances such as restaurant smoking bans or advertising restrictions. It also includes an intensive advertising campaign and smoking cessation programs.

The 12 percent drop in smoking among Massachusetts residents since the program began is cause for alarm among tobacco companies. They

also worry that Attorney General Scott Harshbarger is considering a suit against the industry to recover Medicaid costs attributable to tobacco-related diseases. So the tobacco industry is fighting back. This week Philip Morris hired the politically wired Rasky & Co. to launch a counterattack.

Even the legal muscle of the attorney general's office is no match for the tobacco industry's deep pockets. Insurance companies, law firms and other members of the private sector might consider devoting some of their resources to the case should Harshbarger go forward.

Tobacco manufacturers lure young smokers with coupons on cigarette packs that can be redeemed for T-shirts, compact discs and other paraphernalia. Manufacturers manipulate nicotine levels to keep consumers addicted. They inundate black communities with billboards promoting the illusion of the good life smokers enjoy and have created an "X" brand to equate smoking with liberation. It is time to coordinate the forces for public health in a multifront response.

State to sue over costs of smoking

By Frank Phillips
GLOBE STAFF

Attorney General Scott Harshbarger is preparing a landmark lawsuit against the tobacco industry, seeking to recover hundreds of millions of dollars spent by the state for treatment of Medicaid patients with smoking-related diseases.

Harshbarger's suit will put Massachusetts in a small but growing group of states that are filing the high-stakes lawsuits against tobacco companies. The suit could cost millions of dollars to litigate.

Over the past 40 years, the tobacco industry has never paid any damages to smokers for product liability, but cigarette industry opponents say the rules are changing.

George Weber, the chief of Harshbarger's consumer protection and antitrust division, confirmed the attorney general is on the verge of

filing the lawsuit. The state Legislature last summer passed a law clearing the way for such action.

Michael York, a Washington lawyer representing the Philip Morris Co. in state-filed lawsuits elsewhere, said he is confident the industry will prevail. York said Massachusetts was hypocritical to seek damages from tobacco companies after benefiting from taxes imposed on cigarettes. He also said such lawsuits are a back-door attempt to ban smoking through the courts.

"These are political stunts masquerading as policy initiatives that are best suited for the Legislature, not the courtroom," York said.

Weber said the attorney general's staff believes the lawsuit is on sound footing. He said he is seeking other plaintiffs to join the lawsuit and share legal costs. Weber said his office is consulting with private law

■ CIGARETTES

Continued from Page 1

firms and nonprofit health institutions willing to join the fight, which could last many years.

Harshbarger was given the green light to sue the industry when the Legislature last summer approved an amendment to the fiscal 1995 budget that cleared the legal hurdles for a suit to recover the Medicaid expenditures.

Using statistical analyses and federal surveys of health costs, state officials have estimated that smoking-related diseases such as emphysema and lung cancer cost the Massachusetts Medicaid program more than \$150 million a year. Medicaid is the state and federal health insurance program for the poor.

Harshbarger also is expected to try to recover the cost of lost work days for employees who have become sick because of tobacco-related diseases. Sources say the attorney general's suit may seek damages for the past four years. Weber declined to speculate on the size of damages his office will seek.

Four other states - Mississippi, Minnesota, West Virginia and Florida - have filed similar suits against tobacco companies. Mississippi was the first to sue in May 1994.

Florida's \$1.4 billion lawsuit, filed last month, names as defendants 17 tobacco companies; The Tobacco Institute, an industry group; and the public relations firm Hill & Knowlton.

Cigarette manufacturers, which have for half a century successfully defeated class-action suits, are mounting an all-out counterattack.

But the tobacco firms are facing a very different legal challenge in these suits because their opponents are not smokers. The suits filed by the four states and the one being prepared by Harshbarger take a new approach. The states, representing their taxpayers, are stating they have been forced unfairly to foot the medical bills of those who smoke.

"These cases are exceedingly different," said Richard Daynard, chairman of the Products Liability Project at Northeastern University School of Law. "The Commonwealth of Massachusetts never smoked a cigarette but its taxpayers pay the cost of treating people who have."

But York said Daynard's argument doesn't hold up. "It's hypocritical for the state to maintain that it has never smoked a cigarette," he said. "Massachusetts has made a decision to allow the sale of cigarettes, to levy a heavy sales tax, and has reaped a considerable economic benefit."

York said he is confident the courts will reject the states' claims that the industry cannot rely on its standard defense that smokers knew the risks when they smoked cigarettes and therefore were not entitled to seek damages. That strategy has been key to cigarette makers' defeat of every legal challenge over the past 40 years.

But a judge in Mississippi last month struck a serious blow to the industry's legal strategy when he barred six tobacco companies from raising that defense.

State Sen. Lois Pines (D-Newton), who sponsored the budget amendment that cleared the way for the Massachusetts suit, defended the legal effort on the grounds that cigarette smoking creates a heavy economic and health burden on society.

"What other product is sold that has such a catastrophic impact on the budget of the commonwealth?" Pines asked.

Asked if such lawsuits might open the door for the producers of other products, such as automobiles or fatty foods, to be sued, Pines said: "If you legally use your automobile, it does not normally create trauma. If you legally use cigarettes, it does create trauma."

CAPE COD TIMES

HYANNIS, MA
DAILY 48,134

MONDAY

MAR 6 1995

NEW ENGLAND NEWSCLIP AGENCY, INC.

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State to sue tobacco industry

THE ASSOCIATED PRESS

BOSTON — The state has spent hundreds of millions of dollars treating Medicaid patients with smoking-related diseases, and the Massachusetts attorney general wants to make the tobacco industry pay.

Scott Harshbarger is planning to sue.

In the past 40 years, the tobacco industry has never paid damages to smokers for product liability, and Massachusetts is joining a handful of states looking to hold cigarette makers accountable.

Cigarette manufacturers have defeated class-action lawsuits in the past, and their attorneys say they will vigorously contest these recent suits.

But while past suits were filed by smokers, the states take a different legal approach. Harshbarger's suit — and ones filed by four other states — charge that taxpayers have been forced unfairly to pay for the medical bills of people who smoke.

Smoking-related illnesses cost the Massachusetts Medicaid program more than \$150 million a year, state officials said. Medicaid is the state and federal insurance program for the poor.

"These (legal) cases are exceedingly different," said Richard Dyanard, chairman of the Products Liability Project at Northeastern University School of Law. "The Commonwealth of Massachusetts never smoked a cigarette, but its taxpayers pay the cost of treating people who have."

A Harshbarger aide told the Boston Sunday Globe that the attorney general was close to filing his lawsuit. Mississippi, Minnesota, West Virginia and Florida already have filed similar suits.

Mississippi was the first to sue, in May 1994. Florida's \$1.4 billion lawsuit was filed last month and names as defendants 17 tobacco companies; The Tobacco Institute, an industry group; and the public relations firm Hill & Knowlton.

An attorney for the Philip Morris Co. called the suits a back-door attempt to ban smoking through the courts.

"These are political stunts masquerading as policy initiatives that are best suited for the Legislature, not the courtroom," said Washington lawyer Michael York.

The way was cleared for Harshbarger's suit last summer when the state legislature approved an amendment to the fiscal 1995 budget that removed legal hurdles for such action.

"What other product is sold that has such a catastrophic impact on the budget of the commonwealth?" asked Sen. Lois Pines, D-Newton, who sponsored the amendment.

George Weber, the chief of Massachusetts Attorney General Scott Harshbarger's consumer protection and antitrust division, said the suit will probably cost millions of dollars to litigate. For that reason, he said his office is seeking other plaintiffs to join the lawsuit and share legal costs.

Weber declined to speculate on the size of damages his office will seek. But Harshbarger also is expected to try to recover the cost of lost work days for employees who have become sick because of tobacco-related diseases.

York, the attorney for Philip Morris, said Massachusetts would be hypocritical in seeking damages from tobacco companies.

"Massachusetts has made a decision to allow the sale of cigarettes, to levy a heavy sales tax and has reaped a considerable economic benefit," he said.

End is near for tobacco industry

The announcement that Attorney General Scott Harshbarger intends to file a lawsuit on behalf of the state of Massachusetts to recover from tobacco companies the expenditures made by Massachusetts taxpayers for the health-related costs incurred by smokers is one more sign that the end is near for the tobacco industry as we know it today.

Needless to say, the tobacco companies will fight the lawsuit every step of the way because a defeat will result in a liability of hundreds of millions of dollars.

In addition, the lawsuit is entering into uncharted waters pursuant to a recent act of the legislature which has paved the way for Attorney General Harshbarger's action. The legal process grinds slowly enough even when the law is fairly clear. When the subject of a lawsuit involves a new law, the process can take years and years, especially when the defendant has deep pockets and, should the tobacco companies lose at the state level in any one of the states which have begun this type of action, they undoubtedly will go all the way to the Supreme Court of the United States.

However, although the road is uncertain, the effort being made by the Attorney General's office is a momentous one because for the first time it tries to hit the tobacco companies where it really counts: Directly in their pocketbooks.

The tobacco companies' arguments against the lawsuit at this point are fairly specious. The real issue will be strictly a legal one -- whether a state can pass a law to make a private company pay for the medical expenses incurred by the state (through Medicare and Medicaid payments) because of the alleged harm caused by the products sold by the company.

It is a novel idea, and one which no doubt can be answered only by the U.S. Supreme Court.

However, apart from the legal propriety of the Attorney General's action, there is no denying that as a matter of fairness the tobacco companies should be held liable for the health problems caused by the products they sell.

The facts of this case are clear: The tobacco companies make billions of dollars every year by marketing and selling a product which brings misery -- in the form of lung cancer, stroke, and heart disease -- to their own customers, yet they never have borne any of the financial responsibility for the disease and death their products inflict.

The argument is made that smokers know the health risks and therefore the tobacco companies should be "off the hook" when it comes to paying the medical costs of those who become ill.

However, there are two points against that argument. First, the tobacco companies viciously target their ads to youths who, by law, are minors. Elementary schoolchildren are more familiar with Joe Camel than they are with Mickey Mouse; the Marlboro Gear campaign is hardly geared to middle aged men, but to teenage boys who think the gear is cool; and Virginia Slims ads target teenage girls by showing them that the way to get guys to hang all over them is by smoking.

Second, while it must be admitted that smokers know the health risks of smoking, can it be said that any person, when he or she starts to smoke, also knows that he or she will become addicted to a substance which is more difficult to give up than heroin? Indeed, 70% of smokers who are polled say they would like to give up smoking, but can't.

To paraphrase Churchill, Attorney General Harshbarger's lawsuit may not mean the end of the tobacco companies, nor even the beginning of the end. But it does signal the end of the free rein that the tobacco companies have enjoyed to purvey death and disease with impunity.

THE MEDFORD TRANSCRIPT

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WEEKLY 6,400

MAR 8 1995
NEW ENGLAND NEWS SERVICE

Union-News
4-3-95
p. 5

Tobacco firms face new legal onslaught

By CHRISTOPHER SULLIVAN
The Associated Press

The tobacco industry has never given up a penny in a health-related lawsuit, but opponents say they may finally have found a winning strategy: a new, multifront legal onslaught against cigarette manufacturers.

In four cases, states rather than smokers are the plaintiffs, seeking "reimbursement" for smoking-related health costs.

In other cases, smokers have sued on behalf of anyone hooked by nicotine, huge class actions seeking hundreds of billions in damages. And for the first time in tobacco cases, scores of law firms have banded together to fight for the little guy — and the potential

big payday.

"The industry at this point is reeling on the run," said Richard Daynard, a Northeastern University law professor and chairman of the Tobacco Products Liability Project, a public health advocacy group in Boston.

Daynard acknowledged he has made similar statements before, but called the new plaintiffs "more appealing" to jurors than those in past suits, often ill smokers who had ignored decades of health warnings.

R.J. Reynolds Vice President Daniel Donahue and others in the industry say the tobacco interests will prevail, but he warns that such strategies ignore the bite a loss by cigarette-makers could put

on taxpayers.

"There doesn't appear to be anyone out there who's concerned about the effect that success by these politicians and lawyers would have on the economy of this country," he said.

If states succeed in suits that seek to recoup from cigarette-makers the costs of Medicaid and other public health care associated with smoking, Donahue predicted other industries will be next — from distillers, for alcoholism's costs, to grocers for their contribution to garbage.

Besides Florida, which filed suit in February seeking \$1.43 billion, the states that have gone to court are Mississippi, West Virginia and Minnesota. Though none of the

cases is expected to come to trial this year, nearly every month brings a hearing somewhere.

As the four states cooperate on their legal actions, they say others may join the fray.

"We've been in touch with many, many other states about the possibility of their following suit. ... More than half the states, I'd say," said Tom Pursell, deputy attorney general in Minnesota, where the legal claims include antitrust violations and conspiracy.

Besides the state-initiated suits, a new breed of class actions faces the industry. One, filed in New Orleans, may turn out to be the largest ever lodged, with as many as 60 million plaintiffs.

Tobacco company lied about risks, medical journal says

SMOKING

Continued from Page 1

The AMA trustees said that if the US surgeon general had had access to the scientific evidence on the dangers of smoking available to Brown and Williamson executives 30 years ago, "We can only speculate how many lives would have been saved and how much suffering would

have been averted."

The documents and analyses "provide massive, detailed and damning evidence of the tactics of the tobacco industry," the AMA's board of trustees declared.

"They show us how this industry has managed to spread confusion by suppressing, manipulating and distorting the scientific record."

Much of next week's issue of the Journal of the AMA will be devoted to five analyses of 1,384 Brown and Williamson documents stretching back to 1963, along with public statements by the company and the tobacco industry.

Some of the papers were purloined in 1992 by a Louisville paralegal employee who helped prepare

Brown and Williamson's defense against smoking-related lawsuits. An anonymous source delivered copies of these documents to Stanton A. Glantz of the University of California at San Francisco, who led a team that analyzed their contents.

The analyses, performed by a team from the University of California at San Francisco and the Robert Wood Johnson Medical School in New Jersey, charge that Brown and Williamson had a "sophisticated understanding" of the addictive properties of nicotine as long ago as 1963.

Publicly, the tobacco industry still disputes that nicotine is addictive.

"Nicotine is addictive," a Brown and Williamson vice president said in 1963. "We are ... in the process of selling nicotine, an addictive drug effective in the release of stress mechanisms."

More recently, the AMA authors said, Brown and Williamson research supported the conclusion that second-hand smoke has harmful effects, but the company publicly denied that such hazards had been shown.

Brown and Williamson executives refused to comment on the substance of the new allegations, which a company statement called "a rehashing" of allegations made previously in the media and in congressional hearings.

The company said the AMA's analyses represent "cherry-picking" of the documents that "do not provide a complete picture." Brown and Williamson, the nation's third-larg-

est cigarette manufacturer, makes Kool, Bel-Air, Raleigh, Viceroy, Barclay, Laredo, Richmond and Ell Cutler cigarettes.

The new analyses appear at a legal and political crossroads in the 30-year debate over the dangers of cigarette smoking.

After a two-year analysis, the US Food and Drug Administration this week concluded that nicotine in tobacco is addictive and should be federally regulated as a drug. The FDA has submitted a proposal to the White House to take some limited steps in that direction, such as curbing cigarette sales to minors and

imposing new limits on tobacco advertising.

Antismoking advocates said the documents are also likely to affect a raft of pending lawsuits, some brought as class-action suits by former smokers claiming medical injury and others brought by states seeking industry compensation for Medicaid costs attributable to tobacco-related diseases.

Most of the suits allege fraud by the tobacco industry for marketing products they knew to be unsafe and making public statements contrary to their own research findings.

By Richard A. Knox
CLOSE STAFF

One of the world's leading cigarette companies lied over a three-decade period about its own scientific evidence on the dangers of smoking, nicotine's addictiveness and the dangers of "second-hand" cigarette smoke, according to a series of papers published yesterday by the American Medical Association.

The analyses also offer new evidence that lawyers for Louisville-based Brown and Williamson Tobacco Corp. and its British parent company

Nicotine in the body

The FDA has concluded for the first time that nicotine is a drug that must be regulated, according to news reports.

BRAIN

Nicotine first stimulates the nervous system, then triggers release of neurotransmitters in the brain.

Spreads to nervous system within eight seconds.

LUNGS

Bloodstream absorbs nicotine.

HEART

Heartbeat quickens.

BLOOD VESSELS

Vessels constrict, causing higher blood pressure.

SOURCES: American Lung Association, American Medical Association

KNIGHT RIDER TRIBUNE

AMA: Tobacco firm lied about risks

87-14-95
P. 1

"The evidence is unequivocal - the US public has been duped by the tobacco industry," the AMA's 21 trustees declared in an editorial in the association's weekly Journal. "We should all be outraged."

Parts of the documents surfaced last year in press accounts and congressional hearings, but the Journal's publication "is the first time that their contents have been thoroughly digested and analyzed," said Graham Kelder of the Tobacco Products Liability Project at Northeastern University.

SMOKING, Page 12

AMA will consider FDA proposal on regulating tobacco. Page 12.

One analysis found that Brown and Williamson lawyers took part in designing research projects and reviewed outside scientists' findings prior to publication, in contrast to industry statements that such studies were independent.

Teen-age smoking on increase

Union - News
7-20-95

The Clinton Administration is mulling tougher regulations to help curb the "pediatric disease" of smoking.

By PAUL RAEBURN

Associated Press

NEW YORK — Occasional or regular cigarette smoking by eighth-graders has jumped to 19 percent, an increase of nearly one-third over the past three years, according to a government-funded survey of teen drug use.

Smoking is also on the rise among 10th- and 12th-graders, although the increases are slightly lower in those groups, the survey found.

The findings come at a time when the Clinton administration is considering tougher regulations on cigarettes to combat what it calls the "pediatric disease" of smoking.

Lloyd D. Johnston, who directed the survey for the National Institute on Drug Abuse, said the findings were a warning that the next generation of American adults could face rising rates of lung cancer, heart disease and other smoking-related diseases.

"Cigarette smoking is the largest preventable cause of early death," he said. "To see that serious a behavior starting to grow among our children is very disturbing. There is no question that that will cause an enormous amount of unnecessary disease and death." Johnston is a social psychologist at the University of Michigan's Survey Research Center.

The survey provides solid confirmation of earlier studies, said Michael Eriksen, director of the surgeon general's Office on Smoking and Health at the Centers for Disease Control and Prevention.

"There is absolutely no question that teen smoking rates are on the rise," Eriksen said. "The only people who are denying this are spokespersons for the tobacco industry. They have the audacity to quote CDC data, suggesting that our data shows smoking declining."

The industry and its allies in Congress have been distorting the meaning of CDC data to claim that there has been a 10 percent drop in teen smoking, Eriksen said. Brennan Dawson, a spokeswoman for the Tobacco Institute, did not challenge the new findings, but she did argue that the trends in teen smoking are unclear. "There are conflicts in some of these stud-

Cigarette, marijuana use among teen-agers rising, survey finds

WASHINGTON POST

WASHINGTON — Despite decades of efforts by anti-smoking groups, policy makers and even tobacco companies to curb teen-age cigarette consumption, new government studies show that high-schoolers are lighting up in growing numbers. Smoking among eighth-graders surged 30 percent between 1991 and 1994.

According to the University of Michigan's annual "Monitoring the Future" sur-

vey, 18.6 percent of 13- to 14-year-olds surveyed in 1994 said that they had smoked in the previous 30 days, as opposed to 14.3 percent in 1991. After several flat years, the smoking rate among high school seniors began rising in 1992, from 27.8 percent in that year to 31.2 percent in 1994.

More teen-agers are also smoking marijuana, the survey showed. Among 1994 high school seniors, 30.7 percent said that they had tried marijuana in the past year. That figure is lower than surveys conducted be-

tween 1975 and 1985 but constitutes a significant rise from the 21.9 percent figure in 1992. Marijuana use among eighth-graders has doubled since 1991, according to the federally sponsored research that polls some 50,000 students annually in about 420 public and private schools across the country.

Donna E. Shalala, secretary of the Department of Health and Human Services, was "deeply troubled" by the marijuana statistics, she said yesterday in a statement to the first National Conference on Marijuana

Use. "At the core of our agenda must be a clear and consistent message — marijuana is illegal, dangerous, unhealthy and wrong," Shalala said.

The drug has been linked to pulmonary problems, and some researchers believe it to be addictive. Another study cited at the conference indicated that prenatal exposure to marijuana impairs cognitive skills of children. Canadian researcher Peter Fried found that children of mothers who smoked marijuana and tobacco during pregnancy

showed impaired "executive function" — defined as the ability to plan ahead and make decisions — from ages 9 to 12.

While acknowledging the seriousness of the marijuana statistics, the lead researcher on the Michigan study said that the tobacco statistics should serve as a wake-up call. "Cigarettes will kill far more of today's children than all other drugs combined," including alcohol, said Lloyd D. Johnston, who headed the study for the National Institute on Drug Abuse.

Tobacco Giant Accused Of Unethical Research

San Francisco Chronicle

Associated Press

Washington

Secret research documents show that Philip Morris tracked hyperactive third-graders as potential future smokers and gave electric shocks to college students to see if it would make them smoke more, a congressman charged yesterday. One company report concluded that smokers crave nicotine more than food, he said.

Representative Henry Waxman, D-Calif., displayed stacks of documents from the world's largest tobacco company on the House floor, contending that they illustrate unethical and possibly illegal research into nicotine.

"Philip Morris has targeted children and college students, the youngest segments of the market,

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for special research projects," said Waxman, who said he uncovered the documents during a congressional probe of tobacco.

"These documents make it crystal clear that we need regulation of tobacco to protect our children from becoming addicted to a life-threatening drug. ... I hope they will dissuade members of this body (Congress) from any legislative effort to block that regulation," Waxman said.

Waxman would not release copies of the documents. When he discovered industry records during a committee investigation last year, Brown & Williamson Tobacco Co. tried unsuccessfully to subpoena him to force disclosure of his source. But Waxman is protected legally whenever he is on the House floor, so he submitted the documents for publication today in the official Congressional Record.

The Food and Drug Administration and the White House are discussing ways to prevent childhood smoking, including banning cigarette vending machines and advertising attractive to children.

Philip Morris officials refused to discuss Waxman's charges, saying they had not seen the documents. But "Philip Morris has always said that it studied why people smoke," the company said in a statement. "Nicotine, which is an important component of the taste and flavor of cigarettes, is believed to be one of many reasons."

Philip Morris chief William Campbell testified before Congress last year that tobacco is not addictive.

Waxman said his documents prove that Philip Morris knew more than a decade before the surgeon general did that nicotine is addictive. He read a 1969 company report for Philip Morris' board of directors that concluded that smokers need the "pharmacological effect" of tobacco. Company scientists wrote that the craving was so great, it "pre-empts food in times of scarcity on the smoker's priority list."

Waxman was more concerned about the research projects aimed at young people, saying some, particularly those involving electrical shocking of college students and injecting people with nicotine, appear unethical and possibly illegal.

According to documents Waxman cited:

■ A study on hyperactive children as "prospective smokers" began tracking third-graders in Chesterfield County, Va., in 1974 to see if they later smoked as teenagers as a way to calm down without prescription medication. Researchers wrote that they hoped ultimately to track 60,000 elementary school children and in 1977 enlisted pediatricians who treated hyperactive children. Company scientists wrote that "it would be good to show that smoking is an advantage to at least one subgroup of the population," Waxman read.

The study ended in 1978 when school officials declared that access to students' school and medical records violated their privacy, the company records said.

■ A series of studies titled "Shock I-V" administered electric shocks to college students, beginning in 1969, to see if student smoking increased under stressful conditions. The study ended in 1972 because "fear of shock is scaring away some of our more valuable subjects," researchers wrote.

■ In 1974, Philip Morris executive Thomas Osdene wrote that stopping smoking produces "reactions not unlike those to be observed upon withdrawal of any number of habituating pharmacologic agents."

■ In 1977, the company wrote that it had reached an agreement with a university hospital to inject nicotine into people to measure their reactions, particularly brain waves. It was unclear whether those studies actually occurred.

UST Faces Suit Over Free Samples Provided to Minors

By ALIX M. FREEDMAN

Staff Reporter of THE WALL STREET JOURNAL

In the latest government assault on the tobacco industry, the state of Massachusetts has formally notified UST Inc. that it intends to sue the smokeless tobacco giant for sending free samples to minors.

In a July 21 letter to Vincent Glerer Jr., UST's president, Massachusetts' assistant attorney general, George Weber, said he was "preparing to take legal action" on the basis of the Greenwich, Conn., company's "illegal conduct." The state said it would take action if it was unable to reach a settlement with UST within five days of UST's receipt of the letter.

State officials said that UST yesterday arranged a meeting for later in the week. UST didn't return calls seeking comment.

The Massachusetts action comes amid building pressure on the tobacco industry over underage tobacco use. The White House is now weighing Food and Drug Administration proposals that would classify tobacco as a drug and introduce regulations to curb underage use.

These measures could take a disproportionate toll on UST, which has become the tobacco industry's most profitable company in part because of its popularity among the young. According to a 1992 Surgeon General report, the average age smokeless-tobacco users took up the product was 9.5 years. In Massachusetts, a recent study found that current smokeless tobacco use by high school students more than tripled between 1987 and 1993, growing from 2.8% to 9.3%.

UST has consistently denied targeting underage customers.

The Massachusetts attorney general's action caps a six-month undercover investigation in which 30 high-school and junior high-school students filled out coupon cards from UST ads. The coupons offered free samples of UST's Skoal brand (and in many cases free rock concert tickets).

The youths were instructed by investigators to give their own names, addresses and phone numbers, but to falsify their ages as 18 or older. The upshot of the sting: Twenty-two youths received free samples. Of the rest, seven received nothing and one youth only got concert tickets.

UST's coupons state that minors aren't eligible for samples and that "giving false information in order to accept this offer may constitute a violation of law." But Mr. Weber, chief of Massachusetts' attorney general's consumer protection and anti-trust division, said the state alleges UST violated state law by distributing its products "without adequate safeguards to prevent distribution to children."

Low-profile UST controls 84% of the smokeless tobacco market but recently its sales have begun to flag as smaller rivals make inroads with younger consumers.

UST, which hasn't faced a major liability lawsuit in nearly a decade, is coming under legal fire. On Monday, a lawsuit seeking class-action status was filed in federal court in Wichita, Kan., naming UST's U.S. Tobacco Co. and eight other smokeless tobacco purveyors, accusing the marketers of turning unsuspecting teenagers into nicotine addicts.

—Suein L. Hoang contributed to this article.

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Street
Journal
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p. B7

Shaker
7-26-95
p. 17

Tobacco sting finds samples given to young

By Frank Phillips and Matt Bai
GLOBE STAFF

Opening a new front in the mounting assault on the tobacco industry, Attorney General Scott Harshbarger said yesterday he will sue one of the nation's leading manufacturers of smokeless tobacco after a sting operation caught the company supplying free samples to teenagers.

In a letter sent last week, Harshbarger notified the United States Tobacco Co. that the state will seek civil fines and penalties as a result of a six-month operation in which more than 20 minors were sent free smokeless tobacco samples after sending in display and magazine coupons.

The announcement came a day after President Clinton met with aides in Washington to discuss options for curbing tobacco use among children, including the possibility of banning cigarette vending machines or restricting advertisements that target youth, White House spokesman Mike McCurry said.

It also follows a class-action suit filed Monday in Wichita, Kan., that accuses US Tobacco and other companies of trying to get children addicted to smokeless tobacco.

Aides to Harshbarger said his office enlisted 30 volunteers under the age of 18 to request the free samples using ads commonly found in magazines and on-site displays. Of those, 22 received free smokeless tobacco.

In his letter, Harshbarger notified US Tobacco, based in Greenwich, Conn., that he would seek \$5,000 in penalties for each instance of illegal distribution if an agreement was not reached in five days.

The sting "shines a bright light

The sting 'shines a bright light on the industry's insidious program to market death and disease to our children behind a facade of glamour.'

SCOTT HARSHBARGER

on the industry's insidious program to market death and disease to our children behind a facade of glamour, excitement and 'fun,' Harshbarger said yesterday.

George Weber, chief of the attorney general's consumer protection and antitrust division, said tobacco companies have the same obligation as alcohol producers.

"Can you imagine if there was a coupon available so individuals could receive free six-packs of beer?" he said. "There would be total outrage."

A spokesman for US Tobacco did not return phone calls yesterday.

Harshbarger is also expected to announce soon that Massachusetts will join four other states in suing tobacco companies to recover Medicaid costs associated with treating smoking-related illnesses.

The majority of smokeless tobacco users in Massachusetts are adolescents, some 40,000 of them in grades 7 through 12, according to a 1993 study conducted by the state Department of Public Health.

Dr. Gregory Connolly, director of the state's Tobacco Control +

■ TOBACCO

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Program, called smokeless tobacco a "chemical time bomb in the mouths of tens of thousands of youngsters" that will lead to higher rates of mouth cancer in the next century.

He said the samples sent through the mail are generally low-nicotine "starter products" that taste like cherry cough drops and will not make youngsters sick the way stronger brands can.

The Clinton administration is intensifying pressure on tobacco manufacturers to come clean about the effects of smoking and to stop courting children.

While Clinton considered actions against tobacco companies marketing their products for children, including allowing the US Food and Drug Administration to regulate tobacco as it does alcohol, the Justice Department opened two criminal investigations into whether tobacco executives told the truth to Congress and federal regulators.

The US attorney in New York has convened a grand jury investigation into whether Philip Morris Co. hid information from its nicotine studies from federal regulators, two department officials who demanded anonymity said yesterday.

In Washington, another grand jury will probe possible perjury before Congress during April 1994 hearings, the officials said. US Rep. Martin Meehan, a Lowell Democrat, played a key role in sparking that inquiry when he advised the department of information indicating that executives may have lied when they said they did not manipulate the amount of nicotine in cigarettes.

A Wichita, Kan., law firm filed a class-action suit Monday on behalf of all smokeless tobacco users against five companies for targeting young people and damaging their health. The suit, which must first be cleared by the federal court, reportedly could cost companies more than \$1 billion.

Associated Press contributed to this report.

BERKSHIRE EAGLE

PITTSFIELD, MA
DAILY 31,000

MONDAY

JUL 31 1995

NEW ENGLAND NEWSCLIP AGENCY, INC.
588

Chewing tobacco and children

In its desperate attempt to recruit new customers among the young, the smokeless-tobacco industry offers free-sample coupons in magazines and store displays, sometimes tying the samples to another promotion for rock-concert tickets.

Not surprisingly, the industry is not very careful about making sure that sample recipients have reached the legal age of 18 for such products. Last week, the attorney general revealed the results of a sting operation against the maker of Skoal smokeless tobacco for a promotion in which it sent free tobacco to 22 of 30 underage youths who submitted coupons.

Smokeless tobacco causes cancer of the mouth. Young people are either unaware of this or unconcerned about the danger, because they — with the help of the industry — are becoming the biggest users of smokeless tobacco. "We've got more kids using the product than adults," said Groegry Connolly, head of tobacco control

for the state Department of Public Health. In 1993, more than 18 percent of high-school males reported using it in the prior month.

The AG's office organized the sting by getting 30 high-school and middle-school youngsters to send in the Skoal coupons, falsely claiming they were at least 18 years of age. The company made little if any attempt to verify their age, and the AG is charging the U.S. Tobacco Company with violating the state's Consumer Protection Act because it did not have safeguards against the free samples of smokeless tobacco going to minors.

Ideally, the Massachusetts sting will teach the industry a lesson from coast to coast, putting an end to free-sample giveaways to anyone. If that were to happen and more ballplayers were to give up their wads in favor of chewing gum or sunflower seeds, smokeless tobacco could become a rarity among youth.

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Find out what's in the smoke

Massachusetts legislators are holding a golden opportunity in their hands to lead the nation in forcing tobacco companies to disclose the ingredients of their deadly products.

They shouldn't shy away from a fight with the industry, whose lobbyists came huffing and puffing into the Statehouse last week to denounce the bill sponsored by Sen. Warren E. Tolman (D-Watertown).

The bill would require the companies to tell the Public Health Department how much of each additive — things like arsenic, ammonia and hydrogen cyanide — goes into the cigarette. The department could publicize these reports.

For obvious reasons, the companies don't want consumers reading these names — some of them are deadly poisons, though the amounts present may be so small you won't keel over right away. If you read a list published by

the state listing everything put in your smoke, you might be reminded smoking *will* make you much more likely to keel over before your time.

That's the point. Smokers now ignore the health warning on each package, but after all, they are addicted. Each additional piece of information could help more quit.

The companies argue cigarette ingredients are "trade secrets" and forced disclosure would amount to taking their property without compensation. But this is pure obfuscation, the same nonsense cosmetic companies spouted for years.

The lawyers are blowing smoke. Consumers have as much right to know what's in the cigarettes they smoke as they have to know what's in the food they eat, the medicines they take, the cleaning products they use and the cosmetics they put on. More and more want to know, and they should be able to find out.

NEWTON GRAPHIC

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SEP 7 1995
NEW ENGLAND NEWS SERVICE AGENCY, INC.

Stand up to tobacco lobby

HARSHBARGER

We hope Beacon Hill lawmakers and anti-smoking forces are successful in their efforts to make Massachusetts the first state to require tobacco companies to disclose the ingredients in their products.

But a public hearing last week on a proposed state law made clear the tobacco industry intends to fight the measure with its usual tactics — bullying and threats of lawsuits.

It would be a shame if Big Tobacco prevailed. Unfortunately, the track record of legislatures standing up to the industry holds little promise.

Under the proposal by state Sen. Warren Tolman, D-Water-town, tobacco companies would have to disclose the ingredients in cigarettes, snuff and chewing tobacco to the state Department of Public Health, which would make that information public. This hardly seems onerous, especially since food manufacturers are required by the federal government to list ingredients and additives in their products.

But tobacco industry lawyers threaten to sue the state if the legislation is passed. They say it would violate federal and state laws protecting trade secrets.

That argument doesn't make much sense to us.

It's difficult to believe tobacco firms *don't* know what the other companies put into their cigarettes. Any competent lab scientist could probably figure that out, and tobacco giants have tons of them on their payrolls.

And even if there are "trade secrets," they should not be allowed to supersede the right of people to know exactly what they're ingesting. Food manufacturers made the same arguments when they were opposing ingredient disclosure. Instead of the requirement ruining business, it has allowed food companies to publicize the relative health merits of their products.

Advocates of Tolman's bill say it would not conflict with the federal statute barring disclosure of trade secrets, and some lawmakers are prepared to pass the bill and battle the tobacco industry in court.

Legislative researchers should do their homework before passing this bill — the tobacco industry has deep pockets and a determination to have its way.

We also urge Attorney General Scott Harshbarger to go ahead and file a suit seeking reimbursement from the tobacco industry for all Medicaid expenses incurred during treatment of smoking related illnesses.

Newton state Sen. Lois Pines spearheaded the drive in the state legislature to pass the bill enabling Harshbarger to move forward with this suit. While his office has indicated the attorney general will move forward, he as yet has not.

This is a worthwhile suit which four other states have already filed. The state stands to retrieve hundreds of millions of dollars annually and it could deal a significant blow to the tobacco industry.

We commend Pines and Tolman for having the courage to stand up to the tobacco industry and refusing to be intimidated. We can only hope their colleagues follow their lead.

AG has proposal for tobacco firms

By Frank Phillips
GLOBE STAFF

Would forgo suit in return for program funding

Attorney General Scott Harshbarger is asking tobacco companies to give the state hundreds of millions of dollars to fund antismoking programs, in exchange for dropping his plan to sue them to recover smoking-related Medicaid costs.

A source in the attorney general's office said yesterday Harshbarger is seeking "substantial and sustained industry commitment" from cigarette manufacturers to

combat juvenile smoking, defray state health care costs and fund programs that help people quit smoking.

For months, Harshbarger's aides have been crafting a lawsuit aimed at recovering the estimated \$150 million the state pays annually through its Medicaid program for treatment of smoking-related diseases.

If the attorney general files the suit,

Massachusetts would join a small but growing number of states suing tobacco companies over smoking-related health care costs paid by taxpayers.

Harshbarger revealed part of his negotiating strategy in a talk last night to the board of the Massachusetts division of the American Cancer Society in Boston.

"I have asked my staff to meet with leading cigarette makers before the law-

suit is brought, which is the same courtesy we extend to potential defendants in most civil litigation," Harshbarger said.

A spokesman for the Philip Morris Co., which has 40 percent of the Massachusetts tobacco market, was not available for comment yesterday. Officials at the Tobacco Institute in Washington also were not available.

In the past, the industry has labeled such litigation by the states as backdoor attempts to ban smoking through the

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"I have asked my staff to meet with leading cigarette makers before any lawsuit is brought, which is the same courtesy we extend to potential defendants in most civil litigation."

SCOTT HARSHBARGER

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courts, and has said state officials who file cost-recovery litigation are hypocritical because their states have long benefited from the taxes they impose on tobacco products.

Decision by December

Harshbarger told the cancer society chapter that he expects to make a final decision on whether to file suit by Dec. 1. Four other states - Mississippi, Minnesota, West Virginia, and Florida - have filed similar suits over the past 18 months.

In his talk, the attorney general did not disclose the exact amount he is seeking from the industry. But a source familiar with the negotiations said that the total package would be "in the hundreds of millions of dollars."

According to sources, the attorney general approached the industry for a settlement because he and his aides are concerned about undertaking an expensive and drawn-out lawsuit against an industry that can pour millions of dollars into its litigation efforts.

The suit would break legal ground and is a risky venture for

Harshbarger. The specter of an earlier long and costly suit by the state that ultimately failed - the battle to block the construction of the Seabrook, N.H., nuclear power plant - looms over Harshbarger's decision.

Harshbarger aides said the attorney general's appearance before the cancer society was aimed at bolstering the support he needs from the state's leading antismoking and tobacco control leaders if he decides to sue.

Skirmish won in 1992

The cancer society has a track record for battling the tobacco industry. It successfully pushed a ballot initiative in 1992 in which voters approved a 25 cent per pack tax on cigarettes. The revenue the tax generates - about \$100 million per year - must be used for tobacco control programs and an antismoking media blitz, although fiscally pinched Beacon Hill lawmakers have diverted some of the money to fund other programs.

Harshbarger said the passage of the initiative was "one of the great triumphs of public policy over special interest politics in Massachusetts history" but he also warned that he needed the antismoking forces' help.

"The attorneys general of the states that have filed similar suits all tell me that the public relations, legal and political campaigns waged against them have been vicious and extremely well-funded and unrelenting. I expect no less in Massachusetts," Harshbarger told the cancer society leaders. "If I decide to file this lawsuit I will need the American Cancer society's help on a sustained and continuing basis."

"I have enormous appreciation and respect for the monumental nature of the 1992 victory against tobacco companies, firms that have for too long been the incumbents in the halls of power," Harshbarger said. "I know the risks inherent in such battles and I appreciate the need for major allies if they are to be waged."

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BERKSHIRE EAGLE

PITTSFIELD, MA
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MONDAY
SEP 25 1995

NEW ENGLAND NEWSCLIP AGENCY, INC.

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In Brief

State vs. the tobacco industry

In deliberating whether to file an estimated \$150 million lawsuit against cigarette manufacturers to recover smoking-related Medicaid costs Attorney General Scott Harshbarger is right to enlist the support of the Massachusetts division of the American Cancer Society, as he tried to do last week. There is no doubt that, if faced with costly litigation, the tobacco industry would prove a formidable foe, so the state needs all the financial bolstering it can get from antismoking forces. Mr. Harshbarger's real objective, however, is to avoid a lawsuit altogether in exchange for the tobacco industry's giving the state hundreds of millions of dollars to fund antismoking programs. Whether that goal can be accomplished depends in large part on how strong the state's resolve is against the industry. With the backing of the cancer society — a victor in pushing an antismoking ballot initiative in 1992 — its case can only be strengthened.

Chasing delinquent taxpayers

Unpaid property taxes are a serious problem for Pittsfield and other county communities, and legislation proposed by state Representative Daniel Bosley, a North Adams Democrat and Chairman of the House Commerce and Labor Committee, enabling municipalities to sell the right to collect the taxes to banks and other financial institutions has potential. Cities would get out of the debt collection business and turn the job over to experienced institutions that could work out debt repayment plans with taxpayers. Mr. Bosley says the bill will have safeguards preventing unethical collection agencies from harassing delinquent taxpayers, and those safeguards must be stringent for the legislation to be passed into law. Communities need their tax money, but not at the cost of making life miserable for residents who may have legitimate reasons in these tough economic times for falling behind.

Tobacco threat won't scare off Harshbarger

He'll continue his suit vs. cigarette makers

By Beth Carney

NEWS STAFF WRITER

Attorney General Scott Harshbarger said he still plans to sue tobacco companies for what could add up to billions of dollars in state-funded health care costs, despite a lawsuit filed to block him.

Harshbarger said yesterday that a lawsuit filed by cigarette makers asking a federal judge to stop him from suing them was "a preemptive strike by high-priced lawyers" intended to scare him off.

"There's clearly been a decision somewhere to really raise the stakes," he said.

Five tobacco corporations, including Philip Morris Inc., filed a lawsuit in U.S. District Court Tuesday charging that Harshbarger's threatened lawsuit would violate their constitutional rights to do business by trying

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NEWS PHOTO BY ART ELLMAN

Scott Harshbarger

INSIDE: Harshbarger on for-profit health care. Page 7A

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FRAMINGHAM, MA
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NEWS PHOTO BY ART ELLMAN

Harshbarger

Tobacco

TOBACCO, FROM 1A

to impose massive costs on the companies.

Harshbarger plans to bring a lawsuit that would require the companies to pay for Medicaid expenses associated with caring for illnesses caused by cigarette smoking, a cost he estimates now reaches \$200 million annually.

Harshbarger, who quit smoking himself a year and a half ago, said he was not bringing the lawsuit because of personal experience with tobacco-related illness or anger against the companies, but because of the financial toll on the state.

"Who is responsible for the immense public health cost we have borne for this product?" he said.

In the past year Minnesota, West Virginia, Florida and Mississippi have sued the tobacco industry to recover Medicaid payments in cases that are still in the courts. Tobacco corporations Tuesday filed preemptive lawsuits against attorney generals of Texas and Massachusetts, who are both planning to bring similar lawsuits.

Charles R. Wall, senior vice president and deputy general counsel for Philip Morris, said in a statement that the cigarette-makers' lawsuit is simply asking the court to answer constitutional questions.

"Our case raises significant federal issues that should be determined by federal courts. We believe that when a federal court takes an objective look at the unprecedented nature of these Medicaid actions, we should prevail," he said.

Harshbarger, however, said the tobacco companies' action is just an attempt to silence debate on the issue and has little chance of succeeding in court. Rather than dissuade him, he said it makes him more convinced of the strength of his lawsuit.

"This in a sense, in a backhand way, makes us feel even more comfortable with the potential legal merits of litigation," he said.

Earlier this year Harshbarger said he would file his lawsuit by Dec. 1, but yesterday he backed away from that date.

"I don't intend to rush into a major legal action. My responsibility is to bring it when I feel ready to bring it," he said.

The attorney general said last spring that he would sue tobacco companies, but put it off to give tobacco companies a chance to negotiate a settlement. He said yesterday that he found the cigarette makers unwilling to come to his terms.

Yesterday Harshbarger would not name the amount of money he hopes to recover from the tobacco corporations, saying that it would amount to "millions if not billions of dollars."

The state's lawsuit will hinge on documents recovered in the past few years that indicate tobacco company executives were aware of health risks associated with smoking and did not inform the public, he said.

The legal action should cost taxpayers no money, because a law firm has agreed to take the case on a contingency basis with financial support from some other companies such as Blue Cross and Blue Shield, Harshbarger said.

MIDDLESEX SUNDAY NEWS

FRAMINGHAM, MA
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NEW ENGLAND NEWSCLIP AGENCY, INC.

EDITORIALS

Taking on big tobacco

Tobacco companies want to head Massachusetts Attorney General Scott Harshbarger off at the pass with a preemptive legal strike against his plan to sue them for Medicaid money the state spent to treat smokers over the years.

Here we have an unusual maneuver: suing to enjoin someone from suing you.

Harshbarger had planned to file his suit Dec. 1, but will postpone filing until he feels it's ready. He's also lining up private contributors to the legal war chest for his suit. He is seeking to cushion the impact of the court costs on the taxpayers.

Whether the federal court will buy the cigarette makers' argument or even entertain its anti-suit suit — remains to be seen. One thing is certain: tobacco companies are prepared to spend millions in the courts to keep their deadly enterprise alive.

In Mississippi, Brown & Williamson Tobacco Co. is bending over backward to muzzle former employee Jeffrey Wigand, the source who reportedly told CBS's "60 Minutes" the company squelched development of a self-extinguishing safe cigarette and knowingly laced some pipe tobacco with a flavor additive known to cause cancer in laboratory animals.

The threat of an expensive suit intimidated "60 Minutes" into killing the interview, just as a lawsuit forced an apology out of ABC News a few months ago.

Cigarette makers are reacting to every lawsuit from the various states as if they are fighting for their lives. They might be doing just that.

What Harshbarger and attorneys general in several other states are trying to establish is that the same principle that holds carmakers liable for safety defects, food processors liable for products that make people sick or asbestos manufacturers liable for the damage asbestos does to lungs should also be applied to cigarette companies.

We can see why the tobacco companies want to fight this: The establishment of its liability could lead to the companies being sued right out of existence.

Then again, these companies manufacture a product that, when used as directed, puts its consumers out of existence.

We hope Harshbarger hangs in there and brings the suit.

Stakes high in fight of AG, tobacco firms

By Anthony Flint
GLOBE STAFF

For insight into the great tobacco debate of the '90s, look no further than Pam Laffin and her mother-in-law, a million-dollar lung.

Laffin, 28, a smoker since she was 10 years old, was diagnosed with emphysema at age 24. She quit smoking, and earlier this year her diseased lung was removed and a new one transplanted.

"My first doctor told me, 'If you keep smoking, you'll be dead by the time you're 30,'" said Laffin, the mother of two girls in Malden. "I thought it would be pretty selfish to die on them."

Her two daughters are indeed grateful to have their mother around. But Massachusetts taxpayers picked up the tab: \$250,000 in costs associated with the transplant, over several years, covered by Medicaid.

That's where Massachusetts Attorney General L. Scott Harshbarger has stepped in. Harshbarger's lawyers are preparing a lawsuit that would force the tobacco industry to pay for the costs of treating smoking-related illnesses of the poor — \$1 billion in Medicaid expenditures over four years. They argue the cigarette makers are directly responsible for those expenses.

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SMOKING

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If the suit is filed before the end of the year, as the attorney general's office vows, Massachusetts would join four other states who have sued tobacco companies to reclaim public health-care costs. Along with a major new class-action suit by smokers and efforts by the federal government to regulate tobacco as if it were a drug, reclaiming health-care costs is a major piece of an all-out assault on cigarettes.

The stakes are so high that the five major cigarette makers launched a preemptive strike against Massachusetts late last month — a counter suit that argues Harshbarger's tactics would be illegal and unconstitutional.

Strong arguments

The battle over reclaiming health-care costs for smoking-related illnesses will be a tough one, all sides agree. Lawyers for the tobacco industry have relied on a compelling response: They say it was the personal choice of people like Laffin to smoke; how can they be held liable for health-care costs linked to their product when individuals make the choice to use it?

"This same legal theory against tobacco is equally applicable to beer, wine, cheese, red meat and surfboards, for that matter," said Michael York, a Washington attorney advising Phillip Morris.

Public health officials argue that cigarettes are different — chiefly because nicotine has been shown to be powerfully addicting, they say. And tobacco companies target the most vulnerable segment of the population — the young, the poor, the less educated — to make sure they start the habit and stay hooked, said Greg Connolly, director of the Tobacco Control Program at the state Department of Public Health.

unfounded," he said.

Tobacco lawyers won't say so publicly because of other legal problems they face, but they believe lawsuits like the one Massachusetts is preparing won't go anywhere if plaintiffs can't prove that certain segments of the population — in this case predominantly low-income young women — were essentially coerced into smoking. If that can't be proven, they believe they will win on the argument that individuals make

a personal choice to smoke.

However, George K. Weber, chief of the consumer protection and antitrust division in Harshbarger's office, said the state need only prove that cigarette makers have made "misleading statements" about the health risks of smoking. "The linchpin is that wrongful conduct we're going to allege," Weber said.

Weber said that the suit should be filed before the end of the year, if a law firm can be found to do the

work on a contingency-fee basis.

Connolly, perhaps the state's most active anti-tobacco warrior, said the fight is important symbolically. "It sends a message to the tobacco industry that says, 'Look, the state is responsible for these disadvantaged people. We spend a lot of money on them. So you can't just go around making this your new frontier for tobacco marketing,'" Connolly said. "Whether or not we actually recoup the dollars, we're trying to put the brakes on all this marketing to disadvantaged people, including young people, in this state."

"With pregnant women on Medicaid, for example, we see very high rates of smoking, and we see that the habit was established at age 10 or 11," Connolly said. "They became addicted long before they could make an informed choice about the risk."

Cigarettes also become more of a habit among Medicaid recipients, Connolly said, "because the cigarette becomes your best friend. It gives you a little relief from a very stressful environment."

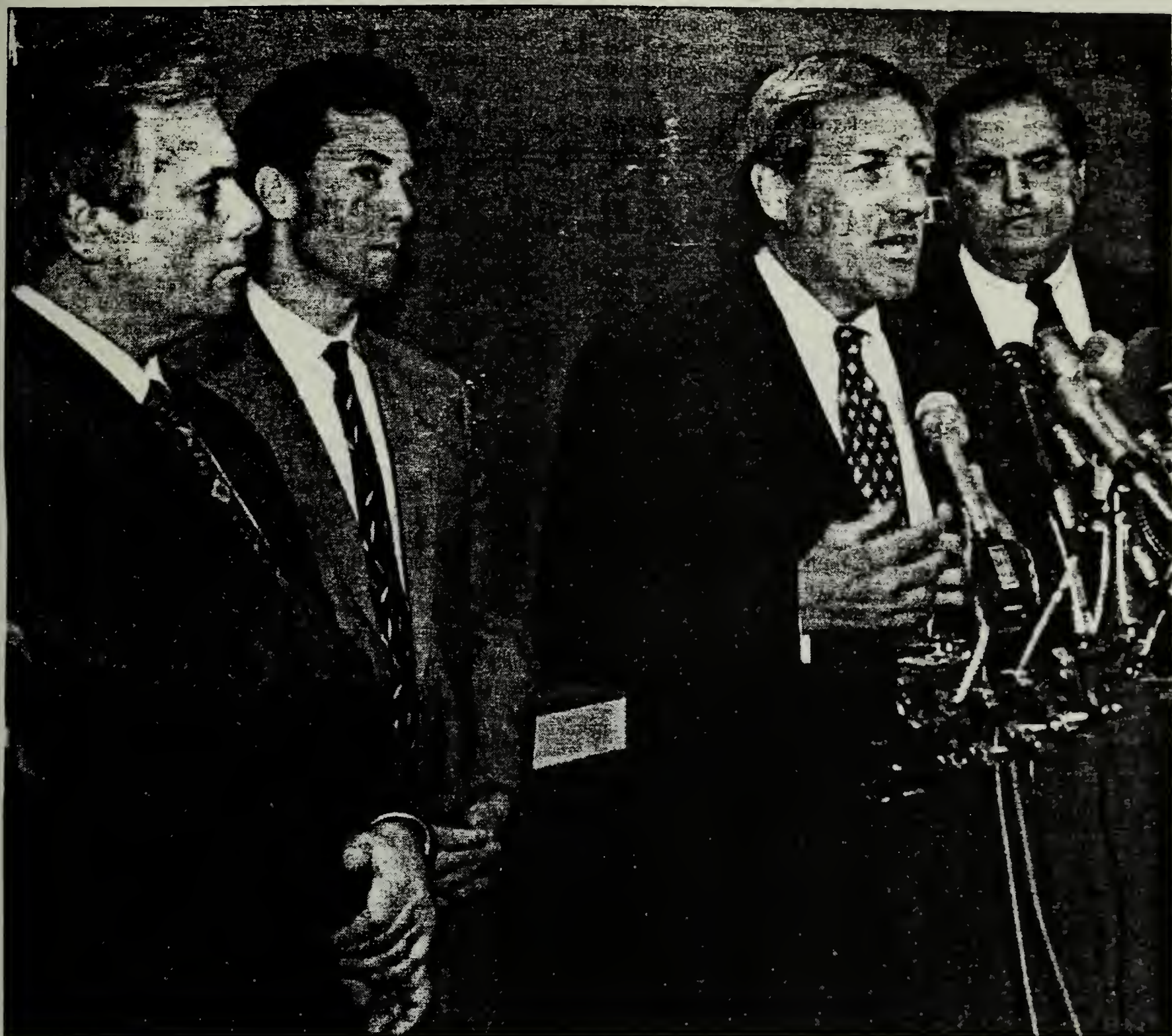
Cigarette makers have done exhaustive studies to determine how to market their product to lower-income groups, women and young people, Connolly said. "They target these people to make up for all the affluent, more-educated white males who have quit smoking."

A question of advertising

Resisting such advertising is a major focus of the lectures Laffin now gives to school groups. Unemployed and on public assistance, she said it is her way of giving back.

"Smoking is definitely a personal choice, but if a 14-year-old girl having trouble with her weight thinks that smoking is going to make her slim and sassy — they just don't realize what they're doing to themselves," Laffin said. "The advertising convinces them."

York, the Phillip Morris lawyer, said the tobacco industry does not target young people or any socioeconomic group that could be considered more "vulnerable" to such advertising. "That's just incorrect and



AP PHOTO

State Attorneys General Bob Butterworth (from left), Mike Moore, Scott Harshbarger and Richard Ieyoub talk to reporters about the settlement.

Liggett, 5 states reach settlement

John 3-16-96 p. 61

By Peter G. Gosselin
GLOBE STAFF

WASHINGTON — Liggett Group, the nation's fifth largest cigarette maker, broke with the tobacco industry for a second time in as many days yesterday, agreeing to settle lawsuits by Massachusetts and four other states that are seeking compensation for some of the public health costs of smoking.

Although the company's payments may end up being comparatively small — perhaps only \$10 million plus a share of Liggett's profits over the next 25 years, or far below what Massachusetts alone says it bears in smoking-related costs annually — the settlement represented a dramatic break with the industry's five-decade-old practice of denying that it has any role in the nation's health problems or costs.

Executives with Liggett and its parent, Brooke Group Ltd., inked the deal less than 48 hours after making an even more dramatic break by agreeing to settle its part of a class-action lawsuit seeking to compensate smokers for what the suit charges is the industry's practice of manipulating nicotine in order to cause addiction.

Agreement involves cash payments, compliance with planned FDA rules

The one-two punch by the firm left the rest of the tobacco industry reeling; the stock of industry leader Philip Morris ended the week down 6½ at 95¾. It left the five state attorneys general who brought the state lawsuit exultant.

"From the beginning, the bottom-line goal of our litigation has been to convince Big Tobacco to play by the same rules that every legitimate business has to play by," Massachusetts Attorney General Scott Harshbarger told a Washington news conference. "Today, after nearly 50 years of denial, deception and stonewalling, we are a giant step closer to making that happen."

"This is the most historic and monumental settlement in American history . . . the most important health care litigation ever filed in America," said Mississippi Attorney General Mike Moore, who led the effort.

Liggett, 5 states reach tobacco-lawsuit settlement

TOBACCO

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The new agreement goes well beyond dollars and cents; it commits Liggett to complying with controversial, proposed Food and Drug Administration rules restricting cigarette advertising to children.

Under the rules, the company promises to no longer use cartoon characters in advertising, or offer emblazoned clothing or outerwear; sponsor musical or athletic events where more than 15 percent of those attending are under 18; and agrees to eventually use only black-and-white text ads in magazines with more than 15 percent adolescent readership.

In addition, Liggett agreed to help the five states pursue legal action against six other tobacco companies, including Philip Morris, by turning over any material information concerning fraudulent or illegal conduct on the part of any of the

parties," according to a news release announcing the settlement.

Harshbarger and the other state officials involved in the case did little to gloss over what they believe are the motives of Liggett majority shareholder Bennett S. LeBow in reaching a settlement with them. "This may be a situation where corporate greed may serve a public need," said Moore.

LeBow, a flamboyant corporate raider, is trying to grab control of the much-larger RJR Nabisco Holdings Corp. and split apart its tobacco and food units, a move he believes will drive the stock prices of the resulting two companies far above that of the current combined operation. But his breakup effort has been stalled in part by fear that antismoking forces would challenge the move to ensure they have a larger company to collect from should they win a smoking liability lawsuit.

Moore and Harshbarger acknowledged that as part of the

agreement the five states have agreed not to seek an injunction against the RJR breakup, and to permit LeBow to escape from some of the more onerous of the agreement's financial obligations if his takeover effort fails.

In return, they said LeBow is required to pay the states at least some money, and has promised that if he succeeds in taking over RJR that both it and Liggett will comply with the agreement.

State officials expect to receive their first \$1 million from LeBow next week. Massachusetts would receive one fifth of that or \$200,000. Another \$4 million will be paid over 10 years. In addition, the state's will receive a percentage of Liggett's pretax profits, ranging from 2.5 percent to 7.5 percent depending on the number of additional states that join the action, for the next 24 years.

If LeBow wins his takeover battle for RJR, the value of the settlement would be considerably greater,

rising to perhaps \$160 million in direct payments and as much as \$2 billion as a share of profits.

The new agreement is almost certain to spur other states to file similar lawsuits. It sets up a separate pot of money for states that have not yet sued, giving them an easy target. In addition, the deal is structured to ensure that the nation's biggest tobacco companies cannot come under the protection of the agreement and therefore remain ripe for suit.

The agreement is also likely to send shockwaves through the political world where Republican conservatives like House Speaker Newt Gingrich have been touting the advantages of both sending power back to the states and cutting regulations like the children's advertising restrictions Liggett has agreed to comply with. GOP theorists may be prompted to rethink their stand.

A clear landmark in a widening legal battle

3-16-96 P. 61

By Maria Shao
GLOBE STAFF

The money won by Massachusetts and four other states in a settlement with cigarette maker Liggett Group amounts to relatively small change. But the pact represents a symbolic and political landmark in an ever-widening legal war being waged on tobacco.

The settlements of a huge class action lawsuit and suits by attorneys general in five states bring the 40-year legal assault on tobacco into new waters. Although it's not clear whether Liggett's bigger tobacco brethren also will acquiesce, the week's events clearly shifted the legal momentum toward tobacco's foes.

"We've got the big 'mo'" crowded Thomas Sobol, a partner at Brown Rudnick Freed & Gesmer, who advised Massachusetts attor-

ney general Scott Harshbarger in his \$1 billion suit against the industry.

The significance of the deals lies not in the dollars won by tobacco plaintiffs, but in the precedents set. Since the first smoking-related suit was filed against the industry in 1954, tobacco companies had been united in fighting all litigation and had never paid a penny to settle a suit. Now one company has broken ranks by settling up.

"The thing that's more important than the dollars is the breakup of tobacco as a unified industry. The aura of invincibility and solid, unified front is now history," declared Ed Sweda, senior attorney at the Tobacco Products Liability Project at Northeastern University School of Law.

Now, the deals could further splinter the industry. The deals ANALYSIS, Page 62

Clear landmark in widening legal battle with tobacco industry

ANALYSIS

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struck with Liggett offer a model for financial settlement for other tobacco companies — a way out of megadollar litigation that hangs like a cloud over the industry and depresses the companies' stock prices. The smaller companies, with smaller pockets, may now find new legal reasons for settling.

The deal marks the first time a tobacco company is at least assuming financial responsibility for tobacco's health harms. Although Liggett reached the pacts without admitting legal wrongdoing, a benchmark has been set for a tobacco firms' financial accountability. This could send a powerful message to jurors and judges in the mountains of other lawsuits pending against the industry. At least one company has ac-

cepted some responsibility.

What's more, Liggett's deals also could boost the Food and Drug Administration's efforts to regulate tobacco. Liggett has agreed to certain proposed regulation of the FDA that limit the marketing of cigarettes to minors as well as agreeing to withdraw from the tobacco industry's efforts to block FDA oversight. Although Liggett did not accept over all FDA jurisdiction, its deals may have opened the door a crack for the FDA. "It certainly lends some legitimacy to what the FDA is attempting. Embedded in the settlement is an acknowledgment that smoking by youth is a problem," said Graham Kelder, managing attorney of the Tobacco Products Liability Project.

And in yet another ground-breaking development, Liggett has agreed to cooperate with five state attorneys general in their legal battles against other tobacco firms. Liggett

has pledged to turn over company documents and information about any fraudulent or illegal behavior by tobacco executives — in effect signing on as a cooperating witness in plaintiffs' battles against the tobacco industry. This could aid tobacco foes in digging up information on the industry's research — particularly involving the central question of whether and when tobacco executives knew of nicotine's addictive qualities. The cooperation from Liggett, could help bring out additional industry whistleblowers, said Thomas Green, first assistant attorney general for Massachusetts, a key negotiator in the states' deal with Liggett.

What's noteworthy about this week's breakthroughs is they occurred because of the quixotic corporate maneuverings of Bennett LeBow, Liggett's majority shareholder — rather than any straightforward legal arguments for or against tobacco. LeBow, a corporate raider rather

than a conventional tobacco man, initiated the dealmaking because such settlements could aid his efforts to gain control of RJR Nabisco.

Said Kelder: "The funny thing about this is that a different kind of businessman... has gotten involved in the tobacco industry and is playing by a different set of rules. The fact that LeBow has gotten involved has really shaken up the landscape in tobacco."

State may get \$177M in tobacco settlement

By ROBERT CONNOLLY

Massachusetts could get an estimated \$177 million over the next 25 years as the nation's fifth-largest cigarette maker yesterday agreed to make payments to five states to offset the public cost of treating smoking-related disease.

Announcing the precedent-setting agreement, state Attorney General Scott Harshbarger said the goal of the suit was "to convince big tobacco interests to play by the same rules that every legitimate industry has to play by. We want them to disclose what they know about their products and to take responsibility for the consequences of their products and actions."

Harshbarger added that "after nearly 50 years of denial, deception and stonewalling," the state was "a giant step closer" to achieving that goal.

Under the settlement reached yesterday, the Liggett Group Inc., agreed to compensate Massachusetts, Florida, Mississippi, West Virginia and Louisiana for the cost of picking up the tab for smoking-related medical bills incurred by Medicaid recipients.

Under the agreed-upon formula, Massachusetts will receive about \$27 million over 10 years to offset the cost of past and current expenses and will get about \$6 million a year over the next 25 years to compensate for future bills.

Liggett, the manufacturer of L & M, Chesterfield, Lark and Eve cigarettes, accounts for only slightly more than 2 percent of U.S. cigarette market, but Harshbarger and the attorneys general from the other states expressed hope that the four other major cigarette makers would follow suit.

"Hopefully, it will cause the other members of the tobacco club to take a step back and perform a cost-benefit analysis of their positions and rethink where

they want to go from here," Harshbarger said.

Under the agreement, the payments to the five states would skyrocket if Liggett's owner, Bennett S. LeBow, is successful in his effort to take over RJR Nabisco Corp., the parent of Reynolds Tobacco.

The agreement also requires Liggett to refrain from marketing cigarettes to minors and to cooperate with the attorneys general in cases they have pending against the other tobacco companies.

In December, Harshbarger filed a \$1 billion suit against the five major cigarette makers and others charging that they knowingly sold and promoted dangerous products.

Liggett earlier this week settled a class-action lawsuit brought on behalf of all U.S. smokers allegedly harmed by cigarettes.

While offering to pay millions, Liggett, under the terms of the deal, neither admits nor denies that its cigarettes are harmful.



SCOTT HARSHBARGER
'Giant step closer'

